No. 16-86
Title: Saint Peter's Healthcare System, et al., Petitioners
v.
Laurence Kaplan
Docketed: July 18, 2016
Linked with 15A1202
Lower Ct: United States Court of Appeals for the Third Circuit
Case Nos.: (15-1172)
Decision Date: December 29, 2015
Rehearing Denied: March 18, 2016
Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
May 23 2016	Application (15A1202) to extend the time to file a petition for a writ of certiorari from June 16, 2016 to July 18, 2016, submitted to Justice Alito.
May 25 2016	Application (15A1202) granted by Justice Alito extending the time to file until July 18, 2016.
Jul 18 2016	Petition for a writ of certiorari filed. (Response due August 17, 2016)
Aug 3 2016	Order extending time to file response to petition to and including September 16, 2016.
Aug 5 2016	Consent to the filing of amicus curiae briefs, in support of either party or neither party, received from counsel for respondents.
Aug 9 2016	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for petitioner.
Aug 12 2016	Brief amicus curiae of Church Alliance filed. VIDED.
Aug 15 2016	Brief amicus curiae of The Thomas More Society filed. VIDED.
Aug 15 2016	Brief amicus curiae of Alliance Defending Freedom filed. VIDED.
Aug 15 2016	Brief amicus curiae of The Catholic Health Association of the United States filed. VIDED.
Aug 15 2016	Brief amicus curiae of The Becket Fund for Religious Liberty filed. VIDED.
Sep 16 2016	Brief of respondent Laurence Kaplan in opposition filed.
Oct 20 2016	Reply of petitioners Saint Peter's Healthcare System, et al. filed.
Nov 2 2016	DISTRIBUTED for Conference of November 22, 2016.
Nov 28 2016	DISTRIBUTED for Conference of December 2, 2016.
Dec 2 2016	Petition GRANTED The petitions for writs of certiorari in 16-74 and 16-258 are granted. The cases are consolidated and a total of one hour is allotted for oral argument. VIDED.
Dec 14 2016	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for respondent Laurence Kaplan.
Jan 17 2017	Brief of petitioners Advocate Health Care Network, et al. filed. VIDED.
Jan 17 2017	Joint appendix (2 Vols.) filed. VIDED.
Jan 18 2017	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioners.
Jan 24 2017	Brief amicus curiae of Church Alliance filed. VIDED.
Jan 24 2017	Brief amici curiae of Council for Christian Colleges & Universities, et al. filed. VIDED.
Jan 24 2017	Brief amicus curiae of The American Center for Law and Justice filed. VIDED.

Jan 24 2017	Brief amici curiae of Alliance Defending Freedom, and Thomas More Society filed. VIDED.
Jan 24 2017	Brief amicus curiae of Saint Elizabeth Medical Center, Inc. filed. VIDED.
Jan 24 2017	Brief amici curiae of Church Defendant filed. VIDED.
Jan 24 2017	Brief amici curiae of United States Conference of Catholic Bishops, et al. filed. VIDED.
Jan 24 2017	Brief amicus curiae of Catholic Health Association of the United States filed. VIDED.
Jan 24 2017	Brief amicus curiae of The Becket Fund for Religious Liberty filed. VIDED.
Jan 24 2017	Brief amicus curiae of The General Conference of Seventh-Day Adventists filed. VIDED.
Jan 24 2017	Brief amici curiae of Christian Legal Society, et al. filed. VIDED.
Jan 24 2017	Brief amicus curiae of the United States filed. VIDED.
Jan 24 2017	Brief amici curiae of Illinois Conference of the United Church of Christ, et al. filed. VIDED.
Jan 31 2017	Letter containing additional disclosure pursuant to Supreme Court Rule 37.6 received from counsel for Church Defendants. VIDED.
Feb 3 2017	SET FOR ARGUMENT on Monday, March 27, 2017. VIDED
Feb 6 2017	Record requested from the U.S.C.A. 3rd Circuit.
Feb 7 2017	Motion of the Deputy Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed. VIDED.
Feb 16 2017	Brief of respondents Maria Stapleton, et al. filed. VIDED.
Feb 22 2017	Record received from the U.S.C.A. 3rd Circuit. The record is electronic.
Feb 22 2017	CIRCULATED.
Feb 22 2017	Brief amicus curiae of National Employment Lawyers Association filed. VIDED. (Distributed)
Feb 23 2017	Brief amici curiae of Americans United for Separation of Church and State, et al. filed. VIDED. (Distributed)
Feb 23 2017	Brief amicus curiae of Pension Rights Center filed. VIDED. (Distributed)
Feb 23 2017	Brief amici curiae of AARP, and AARP Foundation filed. VIDED. (Distributed)
Feb 23 2017	Brief amicus curiae of Professor Daniel I. Halperin filed. VIDED. (Distributed)
Mar 17 2017	Motion of the Deputy Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED. VIDED
Mar 20 2017	Reply of petitioners Advocate Health Care Network, et al. filed. VIDED. (Distributed)
Mar 27 2017	Argued. For petitioners: Lisa S. Blatt, Washington, D. C.; and Malcolm L. Stewart, Deputy Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) For respondents: James A. Feldman, Washington, D. C. VIDED.
Jun 5 2017	Judgment REVERSED. Kagan, J., delivered the opinion of the Court, in which all other Members joined, except Gorsuch, J., who took no part in the consideration or decision of these cases. Sotomayor, J., filed a concurring opinion. VIDED.
Jul 7 2017	JUDGMENT ISSUED.

~~Name~~~~~~~~~~~~~~~~~~~~~~	~~~~~~~~Address~~~~~~~~~~~~~~~~~~~~	~~Phone~~~~
Attorneys for Petitioners:		
Lisa S. Blatt Counsel of Record	Arnold & Porter LLP 601 Massachusetts Ave., NW Washington, DC 20001 lisa.blatt@aporter.com	(202) 942-5000
Party name: Saint Peter's Healthcare System, et al.		
Attorneys for Respondent:		
James A. Feldman	5335 Wisconsin Avenue, N.W.	(202) 730-1267

Counsel of Record	Suite 440 Washington, DC 20015 wexfeld@gmail.com	
Party name: Laurence Kaplan		
Karen L. Handorf	Cohen Milstein Sellers & Toll, PLLC 1100 New York Avenue NW, Suite 500 East Washington, DC 20005 khandorf@cohenmilstein.com	(202) 408-4600
Party name: Laurence Kaplan		

Other:

Bradley J. Andreozzi	Drinker Biddle & Reath LLP 191 North Wacker Drive Suite 3700 Chicago, IL 60606 bradley.andreozzi@dbr.com	(312) 569-1000
Party name: Illinois Conference of the United Church of Christ, et al.		
Mark E. Chopko	Stevens & Young, LLP 1250 Connecticut Ave., N.W., Suite 500 Washington, DC 20036 mchopko@stradley.com	(202) 419-8410
Party name: The Catholic Health Association of the United States		
Paul D. Clement	Kirkland & Ellis LLP 655 Fifteenth Street, N.W. Washington, DC 20005 paul.clement@kirkland.com	(202) 879-5000
Party name: United States Conference of Catholic Bishops, et al.		
Kimberlee Wood Colby	Christian Legal Society 8001 Braddock Rd., Suite 302 Springfield, VA 22151 kcolby@clsnet.org	(703) 894-1087
Party name: Christian Legal Society, et al.		
Karen W. Ferguson	Pension Rights Center 1350 Connecticut Ave., N.W. Washington, DC 20036 kferguson@pensionrights.org	(202) 296-3776
Party name: Pension Rights Center		
Laurence A. Hansen	Locke Lord, LLP 111 South Wacker Drive Chicago, IL 60606 lhansen@lockelord.com	(312) 443-0456
Party name: Church Alliance		

Richard B. Katskee
Americans United for Separation of Church and State
1310 L St., NW, Suite 200
Washington, DC 20005
katskee@au.org
(202) 466-3234
Party name: Americans United for Separation of Church and State, et al.

Emily Janney Kennedy
Jones Day
51 Louisiana Ave., NW
Washington, DC 20001
ekennedy@jonesday.com
(202) 879-3939
Party name: Alliance Defending Freedom, and Thomas More Society

Edwin S. Kneedler
Deputy Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
SupremeCtBriefs@USDOJ
(202) 514-2217
Party name: the United States

Marc I. Machiz
9123 NE Juanita Drive
Unit 307
Kirkland, WA 98034
mmachiz@gmail.com
(610) 724-4381
Party name: Professor Daniel I. Halperin

Richard G. Meyer
Dressman Benzinger LaVelle psc
207 Thomas More Parkway
Crestview Hills, KY 41017
rmeyer@dbllaw.com
(859) 341-1881
Party name: Saint Elizabeth Medical Center, Inc.

Eric C. Rassbach
Becket Fund for Religious Liberty
1200 New Hampshire Ave., Ste. 700
Washington, DC 20036
erassbach@becketfund.org
(202) 955-0095
Party name: The Becket Fund for Religious Liberty

Gene C. Schaerr
Schaerr | Duncan, LLP
1717 K Street, NW, Suite 900
Washington, DC 20006
gschaerr@schaerr-duncan.com
(202) 787-1060
Party name: The General Conference of Seventh-Day Adventists

Jay Alan Sekulow	American Center for Law & Justice 201 Maryland Ave., N.E. Washington, DC 20002 sekulow@aclj.org	(202) 546-8890

Party name: The American Center for Law and Justice

Howard Shapiro	Proskauer Rose LLP 650 Poydras Street Suite 1800 New Orleans, LA 70130 howshapiro@proskauer.com	(504) 310-4088

Party name: Church Defendant

Mary Ellen Signorille	AARP Foundation Litigation 601 E Street, NW Washington, DC 20049 msignorille@aarp.org	(202) 434-2072

Party name: AARP, and AARP Foundation

Malcolm L. Stewart	Deputy Solicitor General Department of Justice Washington, DC 20530 malcolm.l.stewart@usdoj.gov	(202) 514-2201

Party name: United States

Alan E. Untereiner	Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP 1801 K Street, N.W., Suite 411L Washington, DC 20006 auntereiner@robbinsrussell.com	(202) 775-4500

Party name: The Thomas More Society

Helgi C. Walker	Gibson Dunn & Crutcher LLP 1050 Connecticut Ave., NW Washington, DC 20036 hwalker@gibsondunn.com	(202) 955-8500

Party name: Council for Christian Colleges & Universities, et al.

Brian Wolfman	Georgetown Law Appellate Courts Immersion Clinic 600 New Jersey Ave., NW Washington, DC 20001 wolfmanb@law.georgetown.edu	(202) 661-6582

Party name: National Employment Lawyers Association

RECEIVED AND FILED BRIEFS

16-86

No. 16-

Supreme Court, U.S.
FILED
JUL 18 2016
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SAINT PETER'S HEALTHCARE SYSTEM, ET AL.,

Petitioners,

v.

LAURENCE KAPLAN,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

JEFFREY J. GREENBAUM
JAMES M. HIRSCHHORN
KATHERINE M. LIEB
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, NJ 07102
(973) 643-7000

LISA S. BLATT
Counsel of Record
ELISABETH S. THEODORE
ARNOLD & PORTER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
lisa.blatt@aporter.com

Counsel for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

Library of Congress

QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 ("ERISA") governs employers that offer pensions and other benefits to their employees. "Church plans" are exempt from ERISA's coverage. 29 U.S.C. §§ 1002(33), 1003(b)(2). For over thirty years, the three federal agencies that administer and enforce ERISA—the Internal Revenue Service, the Department of Labor, and the Pension Benefit Guaranty Corporation—have interpreted the church plan exemption to include pension plans maintained by otherwise qualifying organizations that are associated with or controlled by a church, whether or not a church itself established the plan.

The question presented is whether the church plan exemption applies so long as a pension plan is maintained by an otherwise qualifying church-affiliated organization, or whether the exemption applies only if, in addition, a church initially established the plan.

PARTIES TO THE PROCEEDING

Petitioners Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero, and Garrick Stoldt were the defendants in the district court and the appellants in the Third Circuit.

Respondent Laurence Kaplan was the plaintiff in the district court and the appellee in the Third Circuit.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Petitioners make the following disclosures:

Saint Peter's Healthcare System has no parent, and no publicly held company owns 10% or more of its stock. The sole member of Saint Peter's Healthcare System is the Bishop of the Roman Catholic Diocese of Metuchen, New Jersey.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

PROVISIONS INVOLVED 1

STATEMENT 1

A. Statutory Background 3

B. Factual Background 9

C. Proceedings Below 11

REASONS FOR GRANTING THE PETITION 13

I. The Question Presented Is of Enormous and Recurring Consequence 13

A. The Third and Seventh Circuits Upset Three Decades of Administrative Practice 15

B. The Decisions Create Massive Upheaval and Irreversible Damage to the Administration of Pension Plans by Religious Ministries 19

II. The Courts of Appeals Are Divided Over the Scope of the Church Plan Exemption 21

III. ERISA Does Not Require a Church To Establish an Exempt Church Plan 25

CONCLUSION 35

TABLE OF CONTENTS—continued

Page

APPENDICES

Appendix A: Opinion of the United States Court of Appeals for the Third Circuit, *Kaplan v. Saint Peter's Healthcare System*, No. 15-1172 (Dec. 29, 2015) 1a

Appendix B: Order Denying Rehearing En Banc (Mar. 18, 2016) 27a

Appendix C: Opinion and order denying motion to dismiss by the United States District Court for the District of New Jersey, *Kaplan v. Saint Peter's Healthcare System*, No. 13-cv-2941 (Mar. 31, 2014) 29a

Appendix D: Opinion and order certifying case for interlocutory appeal by the United States District Court for the District of New Jersey, *Kaplan v. Saint Peter's Healthcare System*, No. 13-cv-2941 (Sept. 19, 2014) 54a

Appendix E: Constitutional and statutory provisions involved 66a

Appendix F: List of church plan opinions by the Department of Labor and Internal Revenue Service 74a

TABLE OF AUTHORITIES

Page(s)

CASES

Beck v. PACE Int'l Union,
551 U.S. 96 (2007) 19, 33

Catholic Charities of Maine, Inc. v. City of Portland,
304 F. Supp. 2d 77 (D. Me. 2004) 17

CFTC v. Schor,
478 U.S. 833 (1986) 34

Chronister v. Baptist Health,
442 F.3d 648 (8th Cir. 2006) 12, 17, 22

Coleman-Edwards v. Simpson,
No. 03-cv-3779, 2008 WL 820021
(E.D.N.Y. Mar. 25, 2008) 18

Conkright v. Frommert,
559 U.S. 506 (2010) 25

Conn. Nat'l Bank v. Germain,
503 U.S. 249 (1992) 26

Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327 (1987) 32

Cottage Sav. Ass'n v. Comm'r,
499 U.S. 554 (1991) 33

Davis v. United States,
495 U.S. 472 (1990) 33

TABLE OF AUTHORITIES—continued

Page(s)

Household Credit Servs., Inc. v. Pfennig,
541 U.S. 232 (2004) 18

Hughes Aircraft Co. v. Jacobson,
525 U.S. 432 (1999) 33

Lann v. Trinity Health Corp.,
No. 14-cv-2237, 2015 WL 6468197 (D. Md. Feb. 24, 2015) 24

Larson v. Valente,
456 U.S. 228 (1982) 31

Lorillard v. Pons,
434 U.S. 575 (1978) 34

Lown v. Cont'l Cas. Co.,
238 F.3d 543 (4th Cir. 2001) 12, 17, 22

Morton v. Ruiz,
415 U.S. 199 (1974) 18

New York v. Cathedral Acad.,
434 U.S. 125 (1977) 32

Overall v. Ascension,
23 F. Supp. 3d 816 (E.D. Mich. 2014) 24

OWCP v. Newport News Shipbuilding,
514 U.S. 122 (1995) 27

TABLE OF AUTHORITIES—continued

Page(s)

Owens v. St. Anthony Med. Ctr., Inc.,
No. 14-cv-4068, 2015 WL 3819086 (N.D. Ill. June 18, 2015) 17

Rose v. Long Island R.R. Pension Plan,
828 F.2d 910 (2d Cir. 1987) 29

Rush Prudential HMO, Inc. v. Moran,
536 U.S. 355 (2002) 19

Seminole Tribe of Florida v. Florida,
517 U.S. 44 (1996) 23

Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich,
426 U.S. 696 (1976) 31

Stapleton v. Advocate Health Care Network, 817 F.3d 517 (N.D. Ill. 2014) 23, 26

Thorkelson v. Publ'g House of Evangelical Lutheran Church in Am.,
764 F. Supp. 2d 1119 (D. Minn. 2011) 17, 24

United States v. Mead Corp.,
533 U.S. 218 (2001) 19, 33

Ward v. Unum Life Ins. Co. of Am.,
No. 09-cv-431, 2010 WL 4337821 (E.D. Wis. Oct. 25, 2010) 17, 24

Young v. Cmty. Nutrition Inst.,
476 U.S. 974 (1986) 18

TABLE OF AUTHORITIES—continued

Page(s)

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I. 1

STATUTES

26 U.S.C. § 410(d) 9

26 U.S.C. § 414(e) 1, 4, 33

26 U.S.C. § 414(e)(3)(A) 6

26 U.S.C. § 414(e)(3)(B) 6

26 U.S.C. § 414(e)(3)(C) 6

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1292(b) 12

29 U.S.C. § 1001 et seq. 1

29 U.S.C. § 1002(33) 1, 33

29 U.S.C. § 1002(33)(A) 4, 6, 25

29 U.S.C. § 1002(33)(C) 4

29 U.S.C. § 1002(33)(C)(i) ..... *passim*

29 U.S.C. § 1002(33)(C)(ii) 5, 28

29 U.S.C. § 1002(33)(C)(iii) 6, 28

TABLE OF AUTHORITIES—continued

Page(s)

29 U.S.C. § 1003(b)(2) 3

29 U.S.C. § 1052 19

29 U.S.C. § 1053 19

29 U.S.C. § 1054 19

29 U.S.C. § 1301 et seq. 20

29 U.S.C. § 1321(b)(3) 4

Pub. L. 96-364, § 407 (1980) 5

Pub. L. 97-248, § 251(b) (1982) 8

Pub. L. 99-272, § 10001(b)(2) (1986) 8

Pub. L. 99-272, § 11016(c)(1) (1986) 8

Pub. L. 99-509, § 9203(b)(1) (1986) 8

Pub. L. 99-514, § 1151(k)(4) (1986) 8

Pub. L. 99-514, § 1879(u)(3) (1986) 8

Pub. L. 100-202, § 136(a) (1987) 8

Pub. L. 100-647, § 3011(a) (1988) 8

Pub. L. 101-239, § 7871(b)(2) (1989) 8

Pub. L. 101-239, § 7881(m)(2)(D) (1989) 8

TABLE OF AUTHORITIES—continued

Page(s)

Pub. L. 101-239, § 7891(a)(1) (1989) 8

Pub. L. 101-239, § 7893(a) (1989) 8

Pub. L. 101-239, § 7894(a) (1989) 8

Pub. L. 101-508, § 12002(b)(2)(C) (1990) 8

Pub. L. 104-188, § 1456 (1996) 8

Pub. L. 104-188, § 1461 (1996) 8

Pub. L. 104-188, § 1462 (1996) 8

Pub. L. 104-191, § 102 (1996) 8

Pub. L. 104-191, § 402(a) (1996) 8

Pub. L. 104-290, § 308(b)(1) (1996) 8

Pub. L. 104-290, § 508 (1996) 8

Pub. L. 105-34, § 1522 (1997) 8

Pub. L. 105-34, § 1532 (1997) 8

Pub. L. 105-72, § 1(a) (1997) 8

Pub. L. 105-200, § 401(f) (1998) 8

Pub. L. 107-16, § 659(a)(1) (2001) 8

Pub. L. 108-203, § 422 (2004) 8

TABLE OF AUTHORITIES—continued

Page(s)

Pub. L. 108-476, § 1 (2004) 8

Pub. L. 109-280, § 611(f) (2006) 8

Pub. L. 109-280, § 905(a) (2006) 8

Pub. L. 109-280, § 906(a)(2)(A) (2006) 8

Pub. L. 109-280, § 1104(c) (2006) 8

Pub. L. 109-280, § 1106(a) (2006) 8

Pub. L. 109-280, § 865 (2006) 8

Pub. L. 110-28, § 6611(a)(1), (b)(1) (2007) 8

Pub. L. 110-458, § 111(c) (2008) 8

Pub. L. 112-142, § 2 (2012) 8

Pub. L. 114-113, § 336 (2015) 8

Other Authorities

124 Cong. Rec. 12,107 (1978) 28, 30

125 Cong. Rec. 10,052 (1979) ..... *passim*

126 Cong. Rec. 20,245 (1980) 28

TABLE OF AUTHORITIES—continued

Page(s)

Dep't of Labor, *Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering Economically Targeted Investments*, 80 Fed. Reg. 65135 (2015) 19

ERISA Proc. 76-1, § 10 17

Hearings Before the Subcomm. on Private Pension Plans and Emp. Fringe Benefits, 96th Cong. 384 (1979) 5

IRS Gen. Couns. Mem. 37,266, 1977 WL 46200 (Sept. 22, 1977) 4, 5, 32

IRS Gen. Couns. Mem. 39,007, 1983 WL 197946 (July 1, 1983) 7

IRS PLR 8325131, 1983 WL 198887 (Mar. 25, 1983) 18

IRS PLR 8447052, 1984 WL 268327 (Aug. 21, 1984) 18

IRS PLR 8837061, 1988 WL 572737 (Sept. 16, 1988) 18

IRS PLR 9034047, 1990 WL 700178 (Aug. 24, 1990) 16

IRS PLR 9323031, 1993 WL 196373 (June 11, 1993) 16

TABLE OF AUTHORITIES—continued

Page(s)

IRS PLR 9332045, 1993 WL 305015 (Aug. 13, 1993) 16

IRS PLR 9442033, 1994 WL 576806 (Oct. 21, 1994) 16

IRS PLR 9443043, 1994 WL 589289 (Oct. 28, 1994) 16

IRS PLR 9547048, 1995 WL 693655 (Nov. 24, 1995) 16

IRS PLR 9621046, 1996 WL 275682 (May 24, 1996) 16

IRS PLR 9632018, 1996 WL 448646 (Aug. 9, 1996) 16

IRS PLR 9835028, 1998 WL 545377 (Aug. 28, 1998) 17

IRS PLR 200326038, 2003 WL 21483121 (June 27, 2003) 17

IRS PLR 2015-51004, 2015 WL 9245327 (Dec. 18, 2015) 7

Mark Casciari & Jennifer Neilsson, *Thoughts on Church Plan Status After Kaplan v. Saint Peter's Healthcare System*, ERISA & Employee Benefits Blog, Jan. 13, 2016 ..... 20, 21

TABLE OF AUTHORITIES—continued

Page(s)

PBGC Op. Ltr. 78-1 (Jan. 5, 1978) 8

PBGC, Questions to the PBGC and Summary of Their Responses (Mar. 2011) 8

Rev. Proc. 2016-1, 2016-1 I.R.B. 1, § 11.01 17

S. Rep. No. 93-383 (1973) 4

Susan Katz Hoffman, *When is a Church Not a Church?* Kaplan v. St. Peter's Healthcare System, 24 ERISA Litig. Rep., No. 1, Feb. 2016 17

U.S. Chamber of Commerce, Increasing Pension Premiums: The Impact on Jobs and Economic Growth (2014) 20

OPINIONS BELOW

The Third Circuit's opinion (App. 1a) is reported at 810 F.3d 175. The district court's opinion (App. 29a) is unreported and is available at 2014 WL 1284854.

JURISDICTION

The Third Circuit issued its decision on Dec. 29, 2015 (App. 1a), and denied rehearing en banc on March 18, 2016 (App. 27a-28a). On May 25, 2016, Justice Alito extended the time for filing this petition to and including July 18, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The statutory and constitutional provisions involved include § 3(33) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(33); § 414(e) of the Internal Revenue Code, 26 U.S.C. § 414(e); and the First Amendment, U.S. Const. amend. I. These provisions are set forth in appendix E.

STATEMENT

It has been settled law for well over thirty years that pension plans maintained by otherwise qualifying church-affiliated organizations are exempt from ERISA, 29 U.S.C. § 1001 et seq., whether or not a church itself established the plan. The three federal agencies charged with interpreting ERISA—the Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC)—agree that such plans qualify for ERISA's "church plan" exemption, and since 1983 have issued opinion after opinion reaffirming that view. Countless nonprofit religious hospitals, orphanages,

schools, day-care centers, and old-age homes have structured their pension plans in reliance on these agencies' views and on the until-now-unanimous lower court decisions confirming their exempt status.

Two recent appellate decisions throw all this into disarray. The Third and Seventh Circuits have recently held that ERISA's church plan exemption applies only if a church "established" the plan. These decisions are squarely at odds with the views of the relevant federal agencies. They conflict with the decisions of two other federal courts of appeals. They are contrary to the plain statutory text, and they resurrect problems of denominational discrimination that 1980 amendments to the exemption were designed to erase.

It is hard to overstate the burden and havoc these two decisions have created. The decisions have prompted dozens of class-action lawsuits against religious organizations that have relied on the church plan exemption for decades. Twenty-two such suits have been filed in the last four months alone. The lawsuits seek billions upon billions of dollars in retroactive liability for noncompliance with ERISA's recordkeeping and other procedural requirements, from which church plans are exempt.

Three days ago, the nonprofit hospital defendant in the Seventh Circuit case filed a petition for certiorari asking this Court to decide whether the church plan exemption contains a "church establishment" requirement. *Advocate Health Care Network v. Stapleton*, No. 16-74. This case presents the same question. As Advocate explains in its petition, the question presented is immensely important. It affects hundreds, probably thousands, of nonprofit religious employers and millions of employees. These lawsuits

have already caused a massive upheaval in the administration of pension plans by religious employers, and they impose substantial burdens on the judicial system and litigants. A significant federal regulatory scheme now applies differently in different circuits. And absent this Court's intervention, courts, employers, and the government must muddle through the many imponderables left in the wake of these decisions, including the scope of retroactive liability and the contours and import of the newly created church-establishment requirement.

The Court should act now. The Court should either grant this petition as a companion to *Advocate* and hear the two cases together, or grant *Advocate* and hold this petition pending the disposition of *Advocate*. The defendants in these suits are nonprofit organizations serving the needy for whom the potential financial liability could be crippling. And affected religious organizations operating in the Third or Seventh Circuit will be forced to restructure their pension plans to comply with ERISA. This will mean renegotiating contracts with employees whose benefits are covered by collective bargaining agreements, revamping benefit structures, redesigning pension funding policies, and overhauling budget plans. It would be impossible to unring the bell if the Court later decides that these recent decisions are wrong, and that the three federal agencies that administer ERISA are right.

A. Statutory Background

1. Congress has exempted "church plans" from the requirements of ERISA since it enacted the statute in 1974. 29 U.S.C. § 1003(b)(2) (1974). Church plans "are some of the oldest retirement plans in the country," and "[s]everal date back to the 1700's." 125

Cong. Rec. 10,052 (1979) (statement of Sen. Talmadge). ERISA regulation, Congress determined, would represent "an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities." S. Rep. No. 93-383 at 81 (1973).

As originally enacted in 1974, ERISA defined an exempt "church plan" as "(i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954, or (ii) a plan described in subparagraph (C)." 29 U.S.C. § 1002(33)(A) (1976).[1] Subparagraph (C) in turn contained a temporary transitional provision regarding existing plans established and maintained for the employees of "one or more agencies of [a] church." *Id.* § 1002(33)(C). Such plans were "treated as a 'church plan,'" but only plans "in existence on January 1, 1974," and even for those plans, only through 1982. *Id.* Parallel, identical provisions of the Internal Revenue Code define the term "church plan" for tax and PBGC insurance purposes. 26 U.S.C. § 414(e) (1976); 29 U.S.C. § 1321(b)(3).

2. In 1977, the IRS determined that the church plan exemption did not cover pension plans established and maintained by two orders of Catholic sisters for the employees of their hospitals. IRS Gen. Couns. Mem. 37,266, 1977 WL 46200 (Sept. 22, 1977). The IRS reasoned that, under then-proposed regulations, a religious order is not a "church" unless the order "is engaged in carrying out the functions of

---

[1] Hereinafter, the term "church" includes a convention or association of churches.

a church." *Id.* at *4. The IRS further reasoned that "carrying out the functions of a church means carrying out the *religious* functions of the church," which the IRS limited to the "ministration of sacerdotal functions and the conduct of religious worship." *Id.* at *4-5 (quotation marks omitted). The IRS thus found it irrelevant that healing the sick is a religious duty in the Catholic faith, concluding that "[t]he fact that an activity is required by the tenets of the church does not necessarily mean that it is a church function as that term is commonly understood." *Id.* at *5. The IRS concluded that the sisters' services to the sick "are not 'church functions' ... since they are not religious." *Id.*

In response, religious groups of all denominations objected to the "intrusion of the [IRS] into the affairs of church groups and their agencies by presuming to define what is and what is not an integral part of these religious groups' mission." 125 Cong. Rec. 10,054-57. The groups explained that the IRS's view would require churches to expel from their pension plans the employees of affiliated organizations. *Hearings Before the Subcomm. on Private Pension Plans and Emp. Fringe Benefits*, 96th Cong. 384 (1979). The groups also warned that the IRS interpretation could prohibit a church from establishing and maintaining an exempt plan indirectly through an affiliated organization, such as a church "pension board." *Id.* at 387, 481.

3. In 1980, Congress amended the church plan exemption, making two principal changes. Multiemployer Pension Plan Amendments Act ("MPPAA"), Pub. L. 96-364, § 407. First, Congress made the church the employer of employees of church-affiliated organizations. Section 1002(33)(C)(ii) now

defines the term "employee of a church" to "include[] ... an employee of an organization, whether a civil law corporation or otherwise, which is [a nonprofit] and which is controlled by or associated with a church." *See also* 26 U.S.C. § 414(e)(3)(B) (parallel tax provision). A "church ... shall be deemed the employer of any individual included as an employee under clause (ii)." 29 U.S.C. § 1002(33)(C)(iii); *see* 26 U.S.C. § 414(e)(3)(C) (parallel tax provision).

Second, Congress added new § 1002(33)(C)(i), which states:

> A plan established and maintained for its employees (or their beneficiaries) by a church ... includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church ..., if such organization is controlled by or associated with a church ....

29 U.S.C. § 1002(33)(C)(i); *see* 26 U.S.C. § 414(e)(3)(A) (parallel tax provision). Thus, while the original Act defined a "church plan" as a plan "established and maintained by a church," § 1002(33)(A), the Act now provides that a plan "established and maintained by a church ... includes a plan maintained by an organization [that] is controlled by or associated with a church," § 1002(33)(C)(i).

4. In 1983, the IRS concluded that, in light of the 1980 amendment, a plan maintained by a church-affiliated retirement committee is a church plan re-

gardless of whether it was established by a church. IRS Gen. Couns. Mem. 39,007, 1983 WL 197946, at *1-2 (July 1, 1983). The IRS explained that a plan covering employees of churches or church-affiliated organizations may qualify as a church plan in two ways. First, a church plan may "be established and maintained by a church." *Id.* at *5. The IRS reiterated its view that religious orders operating hospitals or the like are not "churches." *Id.* at *4. But under the amended exemption, "this nonchurch status is not fatal." *Id.* That is because, alternatively, a church plan may be "maintained ... by an organization described in" the tax-code equivalent of § 1002(33)(C)(i)—*i.e.*, by a church-controlled or associated organization, including a retirement committee. *Id.* at *5. "[B]ecause of the passage of the MPPA[A]," the IRS explained, "church plan status no longer hinges on whether an order is a church." *Id.* at *6.

Since then, the IRS has issued more than 500 private letter rulings confirming that plans maintained by qualifying church-affiliated organizations—including specifically petitioner's plan—are exempt regardless of whether they were established by churches. App. 80a-121a. The agency issued its most recent church plan ruling while this case was pending in the Third Circuit. *See* IRS PLR 2015-51004, 2015 WL 9245327 (Dec. 18, 2015).

The DOL likewise has issued nearly 70 advisory opinions determining that pension plans maintained by qualifying church-affiliated organizations are church plans regardless of whether they were established by churches. App. 74a-79a. And the PBGC does not insure plans that are exempt because they are maintained by church-affiliated organizations,

regardless of whether they were established by churches. *See* PBGC Op. Ltr. 78-1 (Jan. 5, 1978); PBGC, Questions to the PBGC and Summary of Their Responses 25 (Mar. 2011), http://www.pbgc.gov/documents/2011bluebook.pdf.

5. Since 1983, Congress has passed three statutes that presume that church-affiliated organizations can establish an exempt church plan.[2] And Congress has never disturbed the consistent, longstanding, unanimous interpretation by the IRS, DOL, and PBGC, even though it has had ample opportunity to do so. Congress has amended ERISA's definition section a dozen times,[3] and has incorporated or referenced the definition of "church plan" in more than a dozen provisions across the U.S. Code.[4]

---

[2] Pub. L. 97-248, § 251(b) (1982); Pub. L. 108-476, § 1 (2004); Pub. L. 112-142, § 2 (2012).

[3] Pub. L. 99-272, § 11016(c)(1) (1986); Pub. L. 99-509, § 9203(b)(1) (1986); Pub. L. 99-514, § 1879(u)(3) (1986); Pub. L. 100-202, § 136(a) (1987); Pub. L. 101-239, §§ 7871(b)(2), 7881(m)(2)(D), 7891(a)(1), 7893(a), 7894(a)(1)(A), (2)(A), (3), (4) (1989); Pub. L. 101-508, § 12002(b)(2)(C) (1990); Pub. L. 102-89, § 2 (1991); Pub. L. 104-290, § 308(b)(1) (1996); Pub. L. 105-72, § 1(a) (1997); Pub. L. 109-280, §§ 611(f), 905(a), 906(a)(2)(A), 1104(c), 1106(a) (2006); Pub. L. 110-28, § 6611(a)(1), (b)(1) (2007); Pub. L. 110-458, § 111(c) (2008).

[4] Pub. L. 99-272, § 10001(b)(2) (1986); Pub. L. 99-514, § 1151(k)(4) (1986); Pub. L. 100-647, § 3011(a) (1988); Pub. L. 104-188, §§ 1456, 1461, 1462 (1996); Pub. L. 104-191, §§ 102, 402(a) (1996); Pub. L. 104-290, § 508 (1996); Pub. L. 105-34, §§ 1522, 1532 (1997); Pub. L. 105-200, § 401(f) (1998); Pub. L. 106-244, § 2 (2000); Pub. L. 107-16, § 659(a)(1) (2001); Pub. L. 108-203, § 422 (2004); Pub. L. 108-359, § 1 (2004); Pub. L. 109-280, § 865 (2006); Pub. L. 114-113, § 336 (2015).

B. Factual Background

1. Petitioner Saint Peter's Healthcare System is a nonprofit hospital system owned and controlled by the Roman Catholic Diocese of Metuchen. COA App. 224-25. Petitioner operates a single hospital, Saint Peter's University Hospital, a teaching hospital in New Brunswick, New Jersey. Petitioner also operates a handful of other nonprofit healthcare facilities, including an ambulatory surgery center, an outpatient clinic, and a facility for child victims of sexual abuse. The Bishop of Metuchen is the sole member of Saint Peter's and appoints the President, CEO, CFO, and Secretary. COA App. 338. With the exception of two representatives from the hospital's medical staff required by state law, the Bishop appoints every member of Saint Peter's Board and can remove any member at will. COA App. 338. The Bishop holds veto power over any action by the Board. COA App. 338.

The Catholic Church lists Saint Peter's in The Official Catholic Directory, COA App. 341, and Saint Peter's makes its Catholic affiliation apparent to all. Mass is said daily, and daily morning prayers are broadcast over the public address system. Board meetings begin with prayer. Saint Peter's provides healthcare services in accord with the Ethical and Religious Directives for Catholic Health Care Services, guidelines promulgated by the U.S. Conference of Catholic Bishops that provide "authoritative guidance on certain moral issues that face Catholic health care today." COA App. 225.

2. In 1974, Saint Peter's launched a generous, non-contributory defined benefit retirement plan (the "Plan"). Saint Peter's never made an election under 26 U.S.C. § 410(d)—a statutory provision that per-

mits church plans to voluntarily but irrevocably give up their church plan status—but for many years voluntarily treated the plan as if it were an ERISA plan. In 2005, however, the IRS announced new funding requirements that would have devastated Saint Peter's ability to provide free care to the needy. The requirements would have mandated an immediate one-time contribution of $28 million, COA App. 1530—nearly the entire amount that Saint Peter's allocates for charitable care each year. COA App. 341. Complying with those new requirements would likely have required Saint Peter's to implement layoffs. COA App. 1531. Instead of making a one-time contribution of $28 million, Saint Peter's decided to contribute the additional $28 million over a period of three years, to avoid any need for layoffs and to enable it to continue offering the charitable care essential to its Catholic mission. COA App. 1531-32.

Accordingly, Saint Peter's asked the IRS to confirm that its Plan was a "church plan" exempt from ERISA. COA App. 530. In 2013, consistent with its decades-old interpretation of the church plan exemption, the IRS issued a private letter ruling concluding that the Plan is exempt because it is maintained by an organization that is associated with and controlled by the Catholic Church. COA App. 530-34. The IRS further confirmed that the Plan "has been a church plan ... retroactive to January 1, 1974." COA App. 534.

Saint Peter's has made the $28 million contribution, and the respondent in this case continues to receive his full retirement benefits, as does every participant in the Plan.

C. Proceedings Below

1. In 2013, despite 30 years of administrative and judicial decisions confirming that church plans need not be established by churches, an alliance of two plaintiff firms began bringing putative class actions against nonprofit religious employers across the nation, contending that their pension plans were not church plans because they were not established by churches. As the firms themselves recently observed, these lawyers "have for years together developed and litigated the *innovative* theory of liability at issue here." Mot. To Consolidate Actions and To Be Appointed Interim Lead Plaintiff and Interim Co-Lead Counsel at 1, *Garbaccio v. St. Joseph's Hosp. et al.*, No. 16-cv-2740 (D.N.J. May 27, 2016) (emphasis added).

On May 7, 2013, represented by the same two law firms, respondent—a former Saint Peter's employee—filed this putative class action against Saint Peter's and several of its officers, all of whom are petitioners here. Respondent sought a declaration that Saint Peter's Plan was not established by a church and thus was not eligible for the church plan exemption.[5] Respondent also sought an injunction to bring the Plan in compliance with ERISA, damages, disgorgement, civil money penalties of up to $110 per

---

[5] Respondent also alleged that Saint Peter's plan was not maintained by an organization, "whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits." 29 U.S.C. § 1002(33)(C)(i). The IRS, DOL, and PBGC have long agreed that a religious organization may satisfy the "principal purpose" requirement by creating a pension committee, as Saint Peter's has done. The courts below did not rule on this aspect of respondent's complaint.

class member per day for three separate claims, prejudgment interest, costs, and attorneys' fees and expenses. Respondent also alleged—as the plaintiffs in the present onslaught of church plan litigation do in every case—that Saint Peter's plan was underfunded, but in fact the Plan is funded at a level above IRS's minimum funding guidelines for ERISA plans. COA App. 1533. Respondent did not allege that he had been denied any financial benefit to which he is entitled under the Plan.

On March 31, 2014, the district court denied Saint Peter's motion to dismiss. The court rejected Saint Peter's argument that the Plan is a church plan because it is maintained by a qualifying church-affiliated organization under § 1002(33)(C)(i), regardless of who established it. Puzzlingly, the court stated that its reading was "consonant with the two appellate decisions that [at that time had] addressed the church plan definition," App. 43a, even though both appellate courts had stated that a church plan need not be established by a church. *Lown v. Cont'l Cas. Co.*, 238 F.3d 543, 547 (4th Cir. 2001); *Chronister v. Baptist Health*, 442 F.3d 648, 653-54 (8th Cir. 2006).

The court subsequently certified its decision for interlocutory appeal under 28 U.S.C. § 1292(b). App. 64a-65a. The court observed that the "cases [interpreting the church plan exemption] conflict with each other in their analysis" and "there is substantial ground for difference of opinion whether a [non-church] can establish and maintain a church plan." App. 59a.

2. The Third Circuit affirmed, holding that church plans must be established only by churches. Textually, although § 1002(33)(C)(i) provides that "a

plan *established and maintained* ... by a church ... includes a plan *maintained* by [a qualifying church-affiliated] organization," the court concluded that "only the [maintenance requirement] is expanded by the use of 'includes,'" and that the amendment therefore "did not do away with the requirement that a church establish a plan in the first instance." App. 13a.

The Third Circuit denied rehearing en banc. App. 27a-28a.

REASONS FOR GRANTING THE PETITION

I. The Question Presented Is of Enormous and Recurring Consequence

In the last three years, plaintiffs' firms have filed 36 class actions against religious hospital systems across the country, asserting in each case that only a church can establish a church plan.[6] The lawsuits

---

[6] *Chavies v. Catholic Health East*, No. 13-cv-01645 (E.D. Pa. Mar. 28, 2013) (60,000 employees); *Overall v. Ascension Health*, No. 13-cv-11396 (E.D. Mich. Mar. 28, 2013) (122,000 employees); *Rollins v. Dignity Health*, No. 13-cv-01450 (N.D. Cal Apr. 1, 2013) (60,000 employees); *Kaplan v. St. Peter's Healthcare System*, No. 13-cv-2941 (D.N.J. May 7, 2013) (number not alleged); *Medina v. Catholic Health Initiatives*, No. 13-cv-01249 (D. Colo. May 10, 2013) (78,000 employees); *Stapleton v. Advocate Health Care Network*, No. 14-cv-01873 (N.D. Ill. Mar. 17, 2014) (33,000 employees); *Owens v. St. Anthony Medical Center*, No. 14-cv-04068 (N.D. Ill June 2, 2014) (not alleged); *Lann v. Trinity Health Corp.*, No. 14-cv-02237 (D. Md. July 11, 2014) (56,000 employees); *Morris v. Daughters of Charity Health System*; No. 14-cv-04681 (N.D. Cal. Oct. 21, 2014) (8,800 employees); *Griffith v. Providence Health & Services*, No. 14-cv-01720 (W.D. Wash. Nov. 7, 2014) (73,000 employees); *Johnson-Brooks v. Advocate Health and Hospitals*, No. 15-cv-01081 (N.D. Ill. Feb. 3, 2015) (not alleged); *Tucker v. Baptist Health System, Inc.*, No. 15-cv-00382 (N.D. Ala. Mar. 3, 2015) (4,700 employ-

filed to date alone involve benefit plans affecting nearly a million people. The Third Circuit and the

---

ees); *Carver v. Presence Health Network*, No. 15-cv-02905 (N.D. Ill. Apr. 2, 2015) (21,000 employees); *Kemp-DeLisser v. St. Francis Hospital and Medical Center*, No. 15-cv-1113 (D. Conn. July 21, 2015) (not alleged); *Boden v. St. Elizabeth Medical Center, Inc.*, No. 16-cv-00049 (E.D. Ky. Mar. 17, 2016) (8,500 employees); *Lupp v. Mercy Health*, No. 16-cv-441 (S.D. Ohio Mar. 30, 2016) (32,000 employees); *Beiermann v. SSM Health Care Corp.*, No. 16-cv-00460 (E.D. Mo. Apr. 4, 2016) (31,000 employees); *Feather v. SSM Health*, No. 16-cv-00393 (S.D. Ill. April 8, 2016) (31,000 employees); *Curtis v. Wheaton Franciscan*, No. 16-cv-04232 (N.D. Ill. April 11, 2016) (not alleged); *Hodges v. Bon Secours Health System, Inc.*, No. 16-cv-01079 (D. Md. April 11, 2016) (22,000 employees); *Miller v. Bon Secours Health System, Inc.*, No. 16-cv-01150 (D. Md. April 18, 2016) (22,000 employees); *Nicholson v. Franciscan Missionaries of Our Lady Health System*, No. 16-cv-00258 (M.D. La. April 21, 2016) (12,992 employees); *Jewett v. Franciscan Alliance, Inc.*, No. 16-cv-04589 (N.D. Ill. April 22, 2016) (14,600 employees); *Smith v. OSF Healthcare System, et al*, No. 16-cv-00467 (S.D. Ill. April 27, 2016) (16,000 employees); *Allen v. Iowa Health Systems d/b/a Unitypoint Health*, No. 16-cv-01132 (C.D. Ill. April 29, 2016) (30,701 employees); *Whaley v. Mercy Health*, No. 16-cv-00518 (S.D. Ohio May 3, 2016) (32,000 employees); *Bailey v. OSF HealthCare Sys.*, No. 16-cv-01137 (C.D. Ill. May 3, 2016) (18,127 employees); *Sanzone v. Mercy Health*, No. 16-cv-00478 (W.D. Okla. May 6, 2016) (40,000 employees); *Grasle v. Mercy Health*, No. 16-cv-00651 (E.D. Mo. May 10, 2016) (42,000 employees); *Cappello v. Franciscan Alliance*, No. 16-cv-00290 (N.D. Ind. May 12, 2016) (18,000 employees); *Garbaccio v. St. Joseph's Hospital and Medical Center*, No. 16-cv-02740 (D.N.J. May 13, 2016) (5,000 employees); *Barker v. St. Joseph's Healthcare System, Inc.*, No. 16-cv-02748 (D.N.J. May 16, 2016) (5,000 employees); *Butler v. Holy Cross Hospital*, No. 16-cv-05907 (N.D. Ill. June 6, 2016) (not alleged); *Brace v. Methodist Le Bonheur Healthcare*, No. 16-cv-02412 (W.D. Tenn. June 11, 2016) (12,100 employees); *Bowen v. Wheaton Franciscan Services, Inc.*, No. 16-cv-06782 (N.D. Ill. June 28, 2016) (17,000 employees); *Alban v. Mercy Health*, No. 16-cv-00726 (S.D. Ohio June 30, 2016) (not alleged).

Seventh Circuit have now issued decisions, and church plan appeals are pending before the Ninth and Tenth Circuits. *Rollins v. Dignity Health*, No. 15-15351 (9th Cir.); *Medina v. Catholic Health Initiatives*, No. 16-1005 (10th Cir.). A case before the Sixth Circuit—which the district court decided against the plaintiff—settled before oral argument. *Overall v. Ascension Health*, No. 14-1735 (6th Cir.). Additional church plan class actions are currently pending in district courts within the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits. *Supra* n.6.

The pace of new filings is only accelerating—plaintiffs have filed 22 new complaints since the decision below. *Id.* These suits seek billions of dollars in retroactive liability and a wholesale upheaval in the administration of pension plans affecting religious employers and employees across the country. Just one of these cases alone might warrant certiorari. But an explosion of litigation of this magnitude in such an important and recurring area of ERISA, where national uniformity is paramount, plainly warrants this Court's review.

A. The Third and Seventh Circuits Upset Three Decades of Administrative Practice

1. The Third and Seventh Circuits upended the consistent, longstanding position of all three federal agencies Congress charged with enforcing ERISA. In so doing, the courts upset the settled expectations of hundreds, probably thousands, of church-affiliated ministries, which provide benefits to millions of current and former employees across the country. Those religious employers, many for decades, have relied on the agencies' established, unanimous ad-

ministrative interpretation when designing their benefits programs.

Since 1983, the IRS, DOL, and PBGC have consistently informed these employers that their pension and welfare plans are exempt from ERISA, regardless of whether a church established the plans. Although the current wave of litigation involves only hospitals, the decision below applies to all religious employers whose pension plans were not established by a church. The IRS alone has issued more than 500 letter rulings to a vast array of religious employers large and small. In addition to the ruling it issued expressly approving the church plan status of petitioner Saint Peter's plan, the IRS has issued rulings on the plans of religious universities,[7] schools,[8] old-age homes,[9] youth programs,[10] "a charitable day care center, school, and nursery,"[11] "a regional mental health facility,"[12] homes for "poor, destitute and homeless children,"[13] and an organization serving "people who are developmentally disabled."[14] The DOL has issued nearly 70 advisory opinions to a similarly broad spectrum of religious ministries. App. 74a-79a (listing opinions issued to hospitals, schools, elder care organizations, theological seminaries, and nursing homes, among others). The PBGC has con-

---

[7] *E.g.*, IRS PLR 9443043, 1994 WL 589289 (Oct. 28, 1994).

[8] *E.g.*, IRS PLR 9547048, 1995 WL 693655 (Nov. 24, 1995).

[9] *E.g.*, IRS PLR 9332045, 1993 WL 305015 (Aug. 13, 1993).

[10] *E.g.*, IRS PLR 9621046, 1996 WL 275682 (May 24, 1996).

[11] IRS PLR 9034047, 1990 WL 700178 (Aug. 24, 1990),

[12] IRS PLR 9323031, 1993 WL 196373 (June 11, 1993).

[13] IRS PLR 9442033, 1994 WL 576806 (Oct. 21, 1994).

[14] IRS PLR 9632018, 1996 WL 448646 (Aug. 9, 1996).

firmed that these organizations need not pay insurance premiums. *E.g.*, *Owens v. St. Anthony Med. Ctr., Inc.*, No. 14-cv-4068, 2015 WL 3819086, at *4 (N.D. Ill. June 18, 2015). These agencies have told religious employers that they may organize their pension programs around these administrative determinations. Rev. Proc. 2016-1, 2016-1 I.R.B. 1, § 11.01; ERISA Proc. 76-1, § 10.

2. Countless other church-affiliated organizations that have not received their own express administrative determination have likewise reasonably relied on the agencies' settled interpretation. Before the current onslaught of litigation began in 2013, *every* court to consider the issue had held or assumed that church plans need not be established by churches. *E.g.*, *Lown*, 238 F.3d at 547; *Chronister*, 442 F.3d at 653-54; *Thorkelson v. Publ'g House of Evangelical Lutheran Church in Am.*, 764 F. Supp. 2d 1119, 1127 (D. Minn. 2011); *Ward v. Unum Life Ins. Co. of Am.*, No. 09-cv-431, 2010 WL 4337821, at *2 (E.D. Wis. Oct. 25, 2010); *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F. Supp. 2d 77, 84-85 (D. Me. 2004). As one commentator has explained, "[f]or about 30 years, everyone thought they knew what a church plan was." Susan Katz Hoffman, *When is a Church Not a Church?* Kaplan v. St. Peter's Healthcare System, 24 ERISA Litig. Rep., No. 1, Feb. 2016, at 3.

The vast majority of benefit plans currently operated as church plans were not established by churches themselves. Of the hundreds of church plans described in IRS letter rulings, DOL advisory opinions, and judicial opinions, only a handful were established by a church. *See* IRS PLR 200326038, 2003 WL 21483121 (June 27, 2003); IRS PLR

9835028, 1998 WL 545377 (Aug. 28, 1998); IRS PLR 8837061, 1988 WL 572737 (Sept. 16, 1988); IRS PLR 8447052, 1984 WL 268327 (Aug. 21, 1984).[15] Even plans established solely for clergy are often established not by the church itself but by pension boards. A pension plan for Baptist "ordained ministers," for example, "was established and maintained by the [Ministers and Missionaries Benefit Board]." *Coleman-Edwards v. Simpson*, No. 03-cv-3779, 2008 WL 820021, at *12 (E.D.N.Y. Mar. 25, 2008). Under the decision below, all of these plans, which may have been operating as church plans for years or even decades, are suddenly not church plans. And that is so even where the plan sponsors are associated with or controlled by a church.

3. An appellate decision upsetting three decades of administrative practice by three federal agencies and the reliance interests of so many employers would warrant this Court's immediate review in any context. The Court has regularly granted certiorari in analogous or even less compelling circumstances. *E.g.*, *Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232 (2004) (granting certiorari where court of appeals rejected longstanding Federal Reserve Board interpretation); *Young v. Cmty. Nutrition Inst.*, 476 U.S. 974, 975 (1986) (FDA interpretation); *Morton v. Ruiz*, 415 U.S. 199, 201-02 (1974) (BIA interpretation); *see generally* Stephen M. Shapiro et al., Supreme Court Practice 269 (10th ed. 2013) (citing additional cases). But a decision upending three decades of consistent administrative practice by three

---

[15] Some plans were established by religious orders, *e.g.*, IRS PLR 8325131, 1983 WL 198887 (Mar. 25, 1983), which in 1977 the IRS remarkably did not consider the "church." *Supra* pp.4-5.

federal agencies surely warrants this Court's review in the context of ERISA, a highly reticulated scheme where agency deference is at its apex. *Beck v. PACE Int'l Union*, 551 U.S. 96, 104 (2007); *United States v. Mead Corp.*, 533 U.S. 218, 235 (2001).

B. The Decisions Create Massive Upheaval and Irreversible Damage to the Administration of Pension Plans by Religious Ministries

1. Certiorari is additionally warranted because the consequences of the decision below and the Seventh Circuit's decision in *Advocate* are not easily undone, if at all. "[P]redictab[ility]" is essential under ERISA. *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002). Absent this Court's intervention, however, church plans around the country will be left in a state of massive uncertainty. And plans with participants in the Third and Seventh Circuits may have to overhaul their benefit programs in costly, potentially irreversible ways. For example, religious employers would have to restructure their participation, vesting, and accrual rules to comply with ERISA. *See* 29 U.S.C. §§ 1052, 1053, 1054. These changes would be complicated enough to accomplish unilaterally—they would create enormous expenses for which these nonprofit organizations have not planned or budgeted. But many participation, vesting, and accrual rules are subject to collective bargaining, and altering them would require *breaching* existing union contracts and negotiating new ones.

Affected religious employers would also have to revamp investment strategies to eliminate any religious or socially responsible investment criteria that might conflict with ERISA's prudent-investor standard. Dep't of Labor, *Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering*

Economically Targeted Investments, 80 Fed. Reg. 65135 (2015) (explaining that ERISA fiduciaries cannot use socially responsible investment criteria unless the investment is "economically equivalent" to the competing investments that are incompatible with religious or other criteria). Petitioner Saint Peter's, for example, follows the Socially Responsible Investment Guidelines promulgated by the U.S. Conference of Catholic Bishops, and ERISA's economic equivalence requirement will likely conflict with those guidelines. COA App. 342, 1533.

Defined benefit plans would be forced to begin paying premiums to the PBGC, which could come out of the funds available to provide benefits to plan participants or available for charitable care. 29 U.S.C. § 1301 et seq. The PBGC is massively underfunded and has imposed multiple multi-billion-dollar premium increases in recent years—increases that nonprofits like Saint Peter's would pay even though its plan is funded at a level above the ERISA guidelines, and is not at risk.[16] Together, the "financial strains" from these changes "may lead to corporate restructurings, layoffs, mergers or bankruptcies." Mark Casciari & Jennifer Neilsson, *Thoughts on Church Plan Status After Kaplan v. Saint Peter's Healthcare System*, ERISA & Employee Benefits Blog, Jan. 13, 2016, http://goo.gl/ZjwdU8.

But those costs may pale in comparison to the figures plaintiffs seek in these cases. Saint Peter's is a relatively small nonprofit hospital with only 478 beds, yet respondent seeks hundreds of millions of

---

[16] U.S. Chamber of Commerce, Increasing Pension Premiums: The Impact on Jobs and Economic Growth, at 3 (2014), https://goo.gl/z801Z0.

dollars in retroactive penalties. Respondent alleges that Saint Peter's owes 4,700 putative class members $110 a day for every day that Saint Peter's did not provide benefit statements or funding notices that the IRS told Saint Peter's it was not required to provide. Complaint, Prayer for Relief, §§ D-F. And respondents seek that amount for each of three separate violations. *Id.* Stated differently, for just one year, respondents seek more than $550 million in penalties. That amount is more than five times Saint Peter's net assets, and fifty-five times its net cash. COA App. 1542-43. In the Seventh Circuit case, the numbers are in the billions. Pet. for Certiorari, *Advocate*, No. 16-74, at 22.

Like all sponsors of ERISA-exempt church plans, Saint Peter's is a nonprofit entity. In 2014, it provided $36.2 million in charitable care to the needy, consistent with its religious mission to heal the sick. COA App. 341. Allowing this gotcha litigation to proceed would come at the expense of destitute patients in New Jersey who rely on this free care.

II. The Courts of Appeals Are Divided Over the Scope of the Church Plan Exemption

Certiorari is all the more warranted because the circuits are divided over whether church-affiliated organizations may establish church plans. Contrary to the interpretation adopted by the court below and the Seventh Circuit, the Fourth and Eighth Circuits have concluded that there is no church establishment requirement.

1. In *Lown v. Continental Casualty Co.*, the Fourth Circuit held that "a plan established by a corporation associated with a church can still qualify as a church plan." 238 F.3d at 547. *Lown* concerned

a claim for denial of benefits asserted by a former employee of a Baptist hospital system against the insurer of her long-term disability plan. *Id.* at 546. The employee initially filed in state court, but the insurer removed, and the Fourth Circuit affirmed federal jurisdiction under ERISA, holding that the plan was not an exempt church plan. *Id.* at 547-48. The court explained that a plan established by an organization that is not a church "can still qualify as a church plan" if the plan is maintained by a qualifying church-affiliated organization under § 1002(33)(C)(i). *Id.* at 547. But the plan at issue could not satisfy § 1002(33)(C)(i) because the hospital system had dissociated from the Southern Baptist Convention and therefore was not church-affiliated. *Id.* at 548.

The Eighth Circuit reached a similar conclusion in *Chronister v. Baptist Health*, 442 F.3d 648. There, again, the former employee of a Baptist hospital system sued her former employer and the insurer of her long-term disability plan for denial of benefits. *Id.* at 650. As in *Lown*, the employee initially filed in state court, but the defendants removed, and the Eighth Circuit found federal jurisdiction under ERISA. *Id.* at 650-54. Like the Fourth Circuit, the Eighth Circuit recognized that the plan at issue, though not established by a church, would be a church plan if it were maintained by a qualifying church-affiliated organization. *Id.* at 651-52. But as in *Lown*, the plan could not meet that requirement because the hospital system had dissociated from the relevant church. *Id.* at 652.

2. In contrast to these decisions by the Fourth and Eighth Circuits, the Third Circuit below held that ERISA "limit[s] the church plan exemption to

only those plans established by a church." App. 15a. The court candidly acknowledged that in *Lown*, the Fourth Circuit "came to the ... conclusion" that "entities that are not themselves churches ... can establish exempt church plans." App. 8a. But the Third Circuit dismissed that conclusion as "*dictum*." *Id.*

The Seventh Circuit's decision in *Stapleton v. Advocate Health Care Network* likewise held that a church plan must be established by a church. 817 F.3d at 519. And also like the Third Circuit, the Seventh Circuit did not deny that that holding conflicts with *Lown*'s statement that "a plan established by a corporation associated with a church can still qualify as a church plan." *Id.* at 525-26. Like the Third Circuit, the Seventh Circuit minimized that statement as "dicta," because the Fourth Circuit "ultimately decided that the exemption did not apply because the hospital was not associated with or controlled by a church." *Id.* at 526.

3. The 2-2 split over whether church-affiliated organizations may establish church plans warrants this Court's review. Contrary to the Third and Seventh Circuits' statements, the relevant portions of *Lown* and *Chronister* were not superfluous dicta. "[I]t is not only the result but also those portions of the opinion necessary to that result by which [courts] are bound." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996). *Lown* and *Chronister* only reached the question of whether the entities at issue were associated with a church because the Fourth and Eighth Circuits concluded that church plans need not be established by churches.

Importantly, district courts within the Fourth and Eighth Circuits regard *Lown* and *Chronister* as binding, and thus the split over the scope of the

church plan exemption is already leading to inconsistent administration of the law across the country. Based on *Lown*, a district court within the Fourth Circuit recently ruled that ERISA "permits an organization that is 'controlled by or associated with a church ...' to establish a 'church plan.'" *Lann v. Trinity Health Corp.*, No. 14-cv-2237, 2015 WL 6468197, at *1 (D. Md. Feb. 24, 2015); *see* Transcript of Motion Hearing at 40, *id.*, dkt. 72 (district court explaining that "the Fourth Circuit has pretty much put [a church establishment requirement] to rest").

A district court within the Eighth Circuit reached the same conclusion based on *Chronister*, noting that *Chronister* "voiced no concern as to whether the plan was established ... by a church." *Thorkelson*, 764 F. Supp. 2d at 1127. Numerous other district courts have relied on *Lown* and *Chronister* in concluding that plans not established by churches may qualify as church plans. *E.g.*, *Overall v. Ascension*, 23 F. Supp. 3d 816, 827 (E.D. Mich. 2014) (quoting *Lown*); *Ward*, 2010 WL 4337821, at *1-2 (discussing *Lown* and *Chronister*). But courts within the Third and Seventh Circuits now will be compelled to reach contrary results.

And the circuit split is especially intolerable because many religious organizations operate in multiple states. These organizations are now facing suits in the Seventh or Third Circuits—even where they are headquartered in circuits following the traditional interpretation—and face the possibility of inconsistent judgments.[17] The prospect of circuit courts

---

[17] *See, e.g.*, *Feather v. SSM Health*, No. 16-cv-00393 (S.D. Ill. April 8, 2016) (suit in Seventh Circuit against religious organization headquartered in the Eighth Circuit).

coming to differing conclusions regarding the same plan, this Court has recognized, is incompatible with ERISA's goal of national uniformity. *Conkright v. Frommert*, 559 U.S. 506, 520 (2010). Only this Court can resolve the division.

III. ERISA Does Not Require a Church To Establish an Exempt Church Plan

The text, structure, purpose, and history of the church plan exemption, as well as the constitutional avoidance canon, agency deference, and congressional ratification, all point in one direction: church plans need not be established by churches.

1. The text of the church plan exemption unambiguously forecloses a church-establishment requirement. Section 1002(33)(A) provides that "[t]he term 'church plan' means a plan established and maintained ... by a church." Section 1002(33)(C)(i) in turn provides that "a plan established and maintained ... by a church"—*i.e.*, a church plan—"includes a plan maintained by [a qualifying] organization ... controlled by or associated with a church." Subparagraph C thus defines the phrase "established and maintained ... by a church" to include plans maintained by certain church-affiliated organizations—whether or not they were established by a church. As one district court explained, "if A is exempt and A includes C, then C is also exempt." *Overall*, 23 F. Supp. 3d at 828.

Allowing church-affiliated organizations to establish church plans avoids turning the words "established and" in the beginning of subparagraph C(i) into mere surplusage. Had Congress wanted to permit non-church organizations to maintain but not establish church plans, subparagraph C(i) would provide:

"[a] plan ~~established and~~ maintained ... by a church ... includes a plan maintained by [a qualifying church-affiliated] organization." But that is not what the provision says.

The Third and Seventh Circuits ignored the superfluity their interpretation creates. The decision below instead reasoned that "if Saint Peter's were right, the church establishment requirement in § 3(33)(A) would be superfluous." App. 14a; *accord Stapleton*, 817 F.3d at 523. Not so. Subparagraph A plays the essential role of defining the term "church plan" as "a plan established and maintained ... by a church." Without that definition, subparagraph C(i)'s explanation of what "[a] plan established and maintained ... by a church includes" would lack a referent. And subparagraph A makes clear that where a plan is maintained by a church itself rather than a qualifying church-affiliated organization, the plan can still be a church plan. Subparagraphs A and C(i) thus provide alternative, complementary ways to qualify as a church plan. Each provision reaches "cases that the other ... does not." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992).

The Third Circuit also relied on the *expressio unius* canon. App. 15a; *see also Stapleton*, 817 F.3d at 524. But Congress's use of "established and maintained" in subparagraph A and the beginning of subparagraph C(i), when juxtaposed with "maintained" in the latter part of C(i), only underscores that plans maintained by qualifying church-affiliated organizations are church plans regardless of whether they were established by churches. The court below observed that ERISA is a "remedial statute" to be "liberally construed" in favor of employees. App. 16a (quotation marks omitted). That hoary canon is

"th[e] last redoubt of losing cases," *OWCP v. Newport News Shipbuilding*, 514 U.S. 122, 135-36 (1995), and makes particularly little sense where, as here, legislative compromise has led Congress to narrow a comprehensive statute through an express exemption.

The Third Circuit stated that Saint Peter's "essentially conceded the problem" based on an answer at oral argument regarding a hypothetical statute. App. 14a. The court described a statute offering benefits to any person "who is disabled and a veteran," which Congress later amends to provide that "a person who is disabled and a veteran includes a person who served in the National Guard." App. 14a. The court stated that counsel for Saint Peter's had responded that a nondisabled Guardsman would not be entitled to receive benefits because "only the second of the two conditions was satisfied." App. 14a. But counsel for Saint Peter's said no such thing. Counsel opined that disability was a prerequisite in the hypothetical statute, but did not say that "only the second of the two conditions was satisfied," and in fact explained that the church plan language was "different." Oral Argument at 12:46, http://www2.ca3.uscourts.gov/oralargument/audio/15-1172Kaplanv.SaintPeter's.mp3. Indeed, the reason counsel gave the answer he did is that the court's analogy is irredeemably slanted—among other things, it relies on an unstated premise that Congress could not plausibly have intended to offer disability benefits to non-disabled individuals. By contrast here, Congress had good reasons to exempt plans maintained by qualifying church-affiliated organizations regardless of whether they were established by churches. *Infra* pp.30-32. Further, such

plans have received the exemption for over thirty years.

2. The history and purpose of the 1980 amendments reinforce that church plans need not be established by churches. Congress enacted § 1002(33)(C)(i) to resolve doubts regarding plans that were not only maintained but also *established* by pension boards. As Senator Talmadge explained, the 1974 exemption left uncertain whether such a plan "is *established* by a church, as it must be [under the 1974 statute], or by a pension board"—*i.e.*, an affiliated organization that is not itself the church. 125 Cong. Rec. 10,052 (emphasis added). Section 1002(33)(C)(i) answers that question by declaring that a "plan maintained by a pension board" or the like "*is a church plan*," 126 Cong. Rec. 20,245 (1980) (emphasis added), whether established by a church or not. *Accord* 124 Cong. Rec. 12,107 (1978) ("A plan or program funded or administered through a pension board ... will be considered a church plan").

Nothing in the history or purpose of the 1980 amendments supports a church-establishment requirement. The amendments indisputably permit church plans to cover employees of church-affiliated organizations, 29 U.S.C. § 1002(33)(C)(ii)-(iii), and to be maintained by church-affiliated organizations, *id.* § 1002(33)(C)(i). Congress had no reason to make church plan status turn on whether it is the church or the church-affiliated organization that established the plan. In many denominations, enlisting a specific church to establish a plan would be impossible. *Infra* pp.30-31. A church-establishment requirement would only needlessly burden churches and their affiliated organizations, divert money from their religious mission, and offer no added protection to em-

ployees—many of whom would join the plan long after establishment. Tying church plan status to the maintaining organization alone was eminently "sensible," since "the status of the entity which currently maintains a particular pension plan bears more relation to Congress' goals in enacting ERISA and its various exemptions, than does the status of the entity which established the plan." *Rose v. Long Island R.R. Pension Plan*, 828 F.2d 910, 920 (2d Cir. 1987).

The Third Circuit fundamentally misread the legislative history when it suggested that Congress's goal was solely to "account for plans established by churches but maintained by church agencies." App. 18a. And though the court stated that the history "overwhelmingly supports the conclusion that Congress did not intend to open up the exemption" to plans established by church agencies, it offered no support for that conclusion. The court pointed to nothing in the legislative history suggesting that Congress favored a church establishment requirement or thought it would serve any useful purpose. It is not even clear what purpose the Third Circuit envisioned, or what "establishing" a church plan actually entails. Unlike the Seventh Circuit, the Third Circuit did not suggest that a church that "established" a plan for employees of an affiliated organization would bear any financial responsibility for the plan. And for good reason. Petitioners are unaware of any authority for such a proposition; nor have respondents cited any. Nor did the Third Circuit suggest such responsibility would be beneficial. Indeed, church agencies or church ministries often have greater resources than individual churches.

The Third Circuit pointed to Congress's rejection of an earlier version of the 1980 amendment, under

which § 1002(33)(C)(i) would have provided that "a plan 'established and maintained' by a church includes a plan '*established and* maintained' by a church agency." App. 15a (emphasis added). But that earlier version just confirms that from the beginning, Congress was concerned about plans that were not only maintained but also *established* by pension boards. The obvious problem with the earlier version is that it would have excluded mixed plans established by churches but maintained by affiliated organizations—precisely the plans the Third and Seventh Circuit claim Congress *intended* to exempt.

3. Allowing church-affiliated organizations to establish church plans avoids grave constitutional doubts. When Congress amended the exemption in 1980, it recognized that the original 1974 exemption discriminated against "congregational" denominations, in which local churches are independent and autonomous. 125 Cong. Rec. 10,052; 124 Cong. Rec. 12,107. Judaism and most Protestant religions are congregational, for example, while the Catholic Church is hierarchical. Then as now, congregational denominations typically formed independent organizations—separate from any individual church, but controlled by or associated with the denomination as a whole—to establish, fund, and administer pension plans for multiple local churches and affiliated agencies. *Id.* Referring expressly to the 1974 statute's church-establishment requirement, the amendment's sponsor explained that the "requirement also points up the inapplicability of the church plan definition to congregational churches." 125 Cong. Rec. 10,052. The amendment removed the "statutory cloud" over plans affiliated with those denominations. *Id.*

Requiring church plans to be established by churches themselves thus would resurrect the problem Congress sought to solve, forcing members of congregational denominations (like the petitioner in *Advocate*) either to radically reorganize their pension programs, or to forgo their exemption from ERISA. But "religious freedom encompasses the power of religious bodies to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 721-22 (1976) (quotation marks and brackets omitted). And "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982).

The Third Circuit reasoned that religious nonprofits can just "hav[e] a church establish the plan in the first instance." App. 24a-25a. But no one has suggested that this approach would relieve the hundreds or thousands of church plans that were established long ago. And such a "fix" is not easy for congregational denominations such as Judaism and Baptism. No single synagogue or church can "establish" a plan for the employees of myriad independent local congregations and affiliated organizations.

And for hierarchical and congregational denominations alike, the church establishment requirement would throw the government and religious employers right back into the pre-1980, constitutionally dubious morass, in which government bureaucrats decided on a case-by-case basis whether a particular religious organization was a "church." *Supra* pp.4-5. Under that regime, the IRS asked whether the organization was primarily focused on prayer, and concluded that

Catholic sisters who are focused on healing the sick do not qualify as the "church"—the very conclusion that prompted Congress to amend the statute. IRS Gen. Couns. Mem. 37,266, 1977 WL 46200, at *4-5. The decision below would resurrect that regime, creating impermissible, and unnecessary, government entanglement with religion. Indeed, many religious organizations facing the current onslaught of church plan lawsuits have contended in the alternative that their plan was in fact established by a church. *E.g.*, Brief for Defendants-Appellants at 43-52, *Rollins v. Dignity Health et al.*, No. 15-15351 (9th Cir. filed July 6, 2015) (arguing that congregations of Catholic women religious established Dignity Health's plan).

And Congress passed the 1980 amendment because it recognized that "[c]hurch agencies are, in fact, part of the churches" and deserve equal treatment for purposes of ERISA. 125 Cong. Rec. 10,052. By upsetting that principle, the Third and Seventh Circuit decisions raise grave constitutional concerns. "The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977). "[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987).

4. The Third and Seventh Circuits seriously erred in casting aside the consistent, longstanding, unanimous interpretation of all three responsible federal agencies. The administrative interpretation

"involve[s] the contemporaneous construction of a statute and ... ha[s] been in long use." *Davis v. United States*, 495 U.S. 472, 484 (1990). "ERISA is a comprehensive and reticulated statute," *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (quotation marks omitted), and the agencies possess "specialized experience ... on the subtle questions" in this "highly detailed" regulatory scheme, *Mead*, 533 U.S. at 235; *see Beck*, 551 U.S. at 104.

It was inappropriate for the Third Circuit to dismiss the agencies' longstanding view in a scant three paragraphs. App. 22a-23a. And it was especially inappropriate to do so on the inaccurate ground that the IRS's 1983 memorandum did not "consider the church establishment requirement of § 3(33)(A)." App. 23a. The IRS did "consider" subparagraph A. The agency just disagrees with the Third Circuit, and understands subparagraphs A and C to provide distinct ways of qualifying for the exemption. The IRS correctly understood that Congress's purpose in the 1980 amendments was to overrule the IRS's prior views, and interpreted the amended statute consistent with that purpose.

Finally, Congress has ratified the agencies' position by repeatedly revisiting § 1002(33) and § 414(e) without disturbing the longstanding administrative interpretation. *Cottage Sav. Ass'n v. Comm'r*, 499 U.S. 554, 561 (1991). Since 1980, Congress has incorporated the church plan definition into more than a dozen provisions across the U.S. Code, and is "presumed to have had knowledge of the interpretation given to the incorporated law." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978); *supra* n.4. Congress also has repeatedly amended ERISA's definition section in general, and the church plan definition in particular,

without altering § 1002(33)(C)(i), which is "persuasive evidence that the [administrative] interpretation is the one intended by Congress." *CFTC v. Schor*, 478 U.S. 833, 846 (1986) (quotation marks omitted); *supra* n.3.

* * *

This Court should either grant this petition and hear it together with the petition in *Advocate*, or grant *Advocate* and hold this petition. As the petitioners in *Advocate* explain, the Court should act now to provide lower courts and religious employers the clarity they desperately require over this important, recurring question of ERISA coverage. While the Court could call for the views of the Solicitor General, all three federal agencies have already weighed in for decades, and the Solicitor General can set forth his views at the merits stage. Unless and until this Court acts, lower courts around the country will be saddled with unnecessary litigation and confusion over ERISA's church plan exemption. And in the meantime, delaying this Court's review exposes religious nonprofit ministries all over the country that reasonably relied on settled law to burdensome litigation, devastating uncertainty over their continuing legal obligations, and the risk of adverse judgments imposing crippling liability and forcing potentially irrevocable changes to their pension plans.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

JEFFREY J. GREENBAUM
JAMES M. HIRSCHHORN
KATHERINE M. LIEB
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, NJ 07102
(973) 643-7000

LISA S. BLATT
Counsel of Record
ELISABETH S. THEODORE
ARNOLD & PORTER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
lisa.blatt@aporter.com

Counsel for Petitioners

July 18, 2016

APPENDIX

APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-1172

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated

v.

SAINT PETER'S HEALTHCARE SYSTEM; RONALD C. RAK; SUSAN BALLESTERO, an individual; GARRICK STOLDT, an individual; JOHN and JANE DOES 1–20

Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero, Garrick Stoldt,

Appellants

Appeal from the United States District Court for the District of New Jersey (D.C. Civil Action No. 3-13-cv-02941) District Judge: Honorable Michael A. Shipp

---

Argued October 8, 2015

Before: McKEE, *Chief Judge*, AMBRO, and HARDIMAN, *Circuit Judges*

(Opinion filed: December 29, 2015)

Jeffrey J. Greenbaum, Esquire (Argued)
James M. Hirschhorn, Esquire
Sills, Cummis & Gross
One Riverfront Plaza
Newark, NJ 07102

Katherine M. Lieb, Esquire
Sills, Cummis & Gross
One Rockefeller Plaza
New York, NY 10020

Counsel for Appellants
Saint Peter's Healthcare System,
Ronald C. Rak, Susan Ballestero, Garrick Stoldt

Monya M. Bunch, Esquire
Karen L. Handorf, Esquire (Argued)
Mathew A. Smith, Esquire
Michelle C. Yau, Esquire
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, DC 20005

Ron Kilgard, Esquire
Keller Rohrback
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012

Lynn L. Sarko, Esquire
Havila C. Unrein, Esquire
Keller Rohrback
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Counsel for Appellee

Jeremy P. Blumenfeld, Esquire
Melissa D. Hill, Esquire
Morgan Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103

Counsel for *Amicus* Appellant
Catholic Health East

Mark E. Chopko, Esquire
Marissa Parker, Esquire
Brandon Riley, Esquire
Stradley, Ronon, Stevens & Young
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Lisa Gilden, Esquire
The Catholic Health Association of the United States
1875 Eye Street, N.W., Suite 1000
Washington, DC 20006

Counsel for *Amicus* Appellant
Catholic Health Association of the United States

Jared M. Haynie, Esquire
Chipman Gasser
2000 South Colorado Boulevard
Tower One, Suite 7500
Denver, CO 80222

James A. Sonne, Esquire
Stanford Law School
Religious Liberty Clinic
559 Nathan Abbott Way
Crown Quadrangle
Stanford, CA 94305

Counsel for *Amicus* Appellant Becket Fund
for Religious Liberty

Mary E. Signorille, Esquire
AARP Foundation Litigation
601 E Street, N.W.
Washington, DC 20049

Roberta L. Steele, Esquire
National Employment Lawyers Association
2201 Broadway, Suite 402
Oakland, CA 94612

Counsel for *Amicus* Appellees
AARP and National Employment
Lawyers Association

Laurence A. Hansen, Esquire
Hugh S. Balsam, Esquire
Locke Lord
111 South Wacker Drive, Suite 4300
Chicago, IL 60606

G. Daniel Miller, Esquire
Conner & Winters, LLP
1627 Eye Street, N.W., Suite 900
Washington, DC 20006

Counsel for *Amicus* Appellant GuideStone Financial
Resources of the Southern Baptist Convention

Richard H. Frankel, Esquire
Drexel University
Thomas R. Kline School of Law
3320 Market Street
Philadelphia, PA 19104

Karen W. Ferguson, Esquire
Norman P. Stein, Esquire
Pension Rights Center
1350 Connecticut Avenue, N.W., Suite 206
Washington, DC 20036

Counsel for *Amicus* Appellee Pension Rights Center

Patrick C. Elliott, Esquire
Andrew L. Seidel, Esquire
Freedom from Religion Foundation
P.O. Box 750
10 North Henry Street
Madison, WI 53703

Counsel for *Amicus* Appellee Freedom from Religion Foundation

Gregory M. Lipper, Esquire
Ayesha N. Kahn, Esquire
Americans United for Separation of Church and State
1901 L Street, N.W., Suite 400
Washington, DC 20005

Daniel Mach, Esquire
American Civil Liberties Union Foundation
915 15th Street, N.W., 6th Floor
Washington, DC 20005

Counsel for *Amicus* Appellees ACLU, ACLU of New Jersey, and Americans United for Separation of Church and State

OPINION OF THE COURT

AMBRO, *Circuit Judge*

Subsection 4(b)(2) of the Employee Retirement Income Security Act ("ERISA") provides an exemption for church plans. These plans need not comply with a host of ERISA provisions, including fiduciary obligations and minimum-funding rules. ERISA § 3(33)(A) defines a church plan as one that is "established and maintained . . . for its employees (or their beneficiaries)" by a tax-exempt church. Subsection 3(33)(C)(i) clarifies that a "plan established and maintained" by a church includes a plan maintained by a qualifying

agency of a church. But can a church agency, in addition to *maintaining* an exempt church plan, also *establish* such a plan? The District Court concluded that it cannot. We agree. Per the plain text of ERISA, only a church can establish a plan that qualifies for an exemption under § 4(b)(2).[1] Because no church established St. Peter's Healthcare System's retirement plan, we hold that it is ineligible for a church plan exemption.

I. Background

St. Peter's is a non-profit healthcare entity that runs a variety of facilities, including a hospital, and employs over 2,800 people. Though it is not a church, St. Peter's has ties to the Roman Catholic Diocese of Metuchen, New Jersey. For instance, the Bishop of Metuchen appoints all but two members of its Board of Governors. The Bishop also retains veto authority over the Board's actions. Meanwhile, the hospital run by St. Peter's features numerous indicia of the church relationship, including daily Mass and the presence of Catholic devotional pictures and statues throughout the building.

St. Peter's established the retirement plan before us in 1974. It is a non-contributory defined benefit plan, and it covers substantially all employees of St. Peter's hired before July 1, 2010. For more than three decades, St. Peter's operated the plan subject to ERISA and represented to its employees in plan documents and other materials that it was complying with ERISA. Eventually, however, St. Peter's began to consider whether the church plan exemption might apply to its retirement plan. To that end, it filed an

---

[1] Subsection 4(b)(2) of ERISA is codified at 29 U.S.C. § 1003(b)(2). Subsection 3(33) is located at 29 U.S.C. § 1002(33).

application in 2006 with the Internal Revenue Service seeking such an exemption. The Internal Revenue Code borrows its definition of a church plan from ERISA. *See* 26 U.S.C. § 414(e). Although the application signaled the belief of St. Peter's that it qualified for an ERISA exemption, it continued to pay ERISA-mandated insurance premiums for the retirement plan while the application was pending.

In May 2013, Laurence Kaplan, who worked for St. Peter's from 1985 to 1999, filed a putative class action alleging that St. Peter's failed to comply with various ERISA obligations.[2] Among other things, the complaint alleged that, in the years after St. Peter's filed the application for a church plan exemption, it did not provide ERISA-compliant summary plan descriptions or pension benefits statements. The most serious allegation was that, as of the end of 2011, the plan was underfunded by more than $70 million.[3] In August 2013, while the lawsuit was pending, St. Peter's received a private letter ruling from the IRS affirming the plan's status as an exempt church plan for tax purposes.[4]

St. Peter's moved to dismiss the suit, claiming that it qualified for ERISA's church plan exemption and hence was not required to comply with the provisions Kaplan claimed it had violated. Specifically, St. Peter's argued that the claimed exemption robbed the District

---

[2] The complaint also names certain individuals employed by St. Peter's. We refer to these individuals and their employer collectively as "St. Peter's."

[3] On appeal, Kaplan focuses on numbers from 2014. He says that those show that the plan was underfunded at that time by approximately $30 million. *See* Appellee's Br. at 5.

[4] As discussed in Part VII, this private letter ruling does not control our inquiry.

Court of subject matter jurisdiction over the ERISA allegations and in the alternative that the complaint failed to state a claim. The District Court denied the motion after concluding that St. Peter's could not establish an exempt church plan because it is not a church.

In reviewing the District Court's conclusion, we do not write on a blank slate. In the decades following the current church plan definition's enactment in 1980, various courts have assumed that entities that are not themselves churches, but have sufficiently strong ties to churches, can establish exempt church plans. *See, e.g.*, *Catholic Charities of Me., Inc. v. City of Portland*, 304 F. Supp. 2d 77, 84–85 (D. Me. 2004); *Humphrey v. Sisters of St. Francis Health Servs., Inc.*, 979 F. Supp. 781, 785–86 (N.D. Ind. 1997). The only Circuit to consider the question came to the same conclusion, albeit in a *dictum*. *See Lown v. Cont'l Cas. Co.*, 238 F.3d 543, 547 (4th Cir. 2001). However, a new wave of litigation, of which this case is a part, has sprung up in the past few years and has presented an argument not previously considered by courts that the actual words of the church plan definition preclude this result.

Riding this new wave, three other courts have agreed with the District Court here that only churches can establish exempt church plans. *See Stapleton v. Advocate Health Care Network*, 76 F. Supp. 3d 796, 806 (N.D. Ill. 2014); *Medina v. Catholic Health Initiatives*, No. 13-CV-01249, 2014 WL 3408690, at *9 (D. Colo. July 9, 2014); *Rollins v. Dignity Health*, 19 F. Supp. 3d 909, 917 (N.D. Cal. 2013). By contrast, three courts have ruled that plans established and maintained by church agencies can qualify for an exemption. *See Lann v. Trinity Health Corp.*, No. 8:14-cv-

02237 (D. Md. Feb. 23, 2015) (ECF No. 54 at 1); *Medina v. Catholic Health Initiatives*, No. 13-CV-01249, 2014 WL 4244012, at *2 (D.Colo. Aug. 26, 2014);[5] *Overall v. Ascension*, 23 F. Supp. 3d 816, 829 (E.D. Mich. 2014). The Seventh Circuit heard argument in *Stapleton* on September 18, 2015, but we are the first Circuit to decide the question in a holding.

II. Jurisdiction and Standard of Review

The District Court had jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1). St. Peter's filed a motion to dismiss, which the District Court denied. However, the Court permitted St. Peter's to seek leave from us to appeal, and we accepted the interlocutory appeal. We thus have jurisdiction under 28 U.S.C. § 1292(b). Our review of questions of law certified under this provision is plenary. *See Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 621 F.3d 296, 301 (3d Cir. 2010).

III. The Church Plan Exemption

When Congress enacted ERISA in 1974, § 3(33) defined a church plan as follows:

> (33)(A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue

---

[5] The August 26, 2014 District Court opinion in *Medina*, written by Judge Blackburn, was on review of the July 9, 2014 opinion, written by Magistrate Judge Mix. Judge Blackburn rejected Magistrate Judge Mix's recommendation. In a later opinion, Judge Blackburn granted summary judgment to the defendants on the basis of a church plan exemption. *Medina v. Catholic Health Initiatives*, No. 13-CV01249, 2015 WL 8144956, at *14 (D. Colo. Dec. 8, 2015).

> Code of 1954, or (ii) a plan described in subparagraph (C).
>
> . . .
>
> (C) . . . [A] plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) . . . , and if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

In the years following ERISA's enactment, this definition led to two problems, both of which are summarized here but discussed in more detail in Part VI below. First, experience showed that many churches established their own plans but relied on church pension boards for plan maintenance. Churches that followed this practice were concerned that their plans might not technically qualify as "established and maintained" by a church. Second, churches wanted the ability to continue to cover the employees of church agencies, such as church hospitals, after the sunset provision in § 3(33)(C) took effect at the end of 1982. Congress addressed both concerns as part of the Multiemployer Pension Plan

Amendments Act of 1980, which amended § 3(33) as follows:

> (33)(A) The term "church plan" means a plan established and maintained . . . for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of Title 26.
>
> . . .
>
> (C) For purposes of [paragraph 33]—
>
> (i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.[6]
>
> (ii) The term employee of a church or a convention or association of churches includes—

---

[6] Although the statute speaks in terms of churches along with conventions or associations of churches, for ease of reference we refer to them collectively as "churches." Additionally, we refer to the principal-purpose entities described in § 3(33)(C)(i) interchangeably as "church agencies" or "pension boards."

> (I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;
>
> (II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of Title 26 and which is controlled by or associated with a church or a convention or association of churches . . . .

This new definition solved both of the issues that stemmed from the 1974 definition. Specifically, new § 3(33)(C)(i) unambiguously brought within the exemption plans established by churches but maintained by church pension boards. And new § 3(33)(C)(ii) allowed churches to establish plans that covered church agency employees even after the sunset provision kicked in at the end of 1982.

However, St. Peter's argues that the 1980 amendments also accomplished a third result—annulling the requirement that a church establish a plan in order for it to qualify for an exemption. Under its proposed reading, any plan can qualify for the exemption regardless of who establishes it as long as it meets the maintenance requirements of § 3(33)(C)(i). As noted below, we believe this reading fails to follow the actual words of the provision.

IV. Plain Meaning

We start our review, as we must, with a familiar question: Do the words of the statute have "a plain and unambiguous meaning with regard to the particular dispute in the case"? *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (internal quotation marks

omitted). Here, the statute has a plain meaning, and that meaning sets the result.

Subsection 3(33)(A) requires that all exempt plans be established by a church. Prior to 1980, a plan needed to be established *and* maintained by a church. The 1980 amendments provided an alternate way of meeting the maintenance requirement by allowing plans maintained by church agencies to fall within the exemption. But they did not do away with the requirement that a church establish a plan in the first instance. As the District Court explained,

> [t]he key to this interpretation is to recognize that subsection [3(33)]A is the gatekeeper to the church plan exemption: although the church plan definition, as defined in subsection A, is expanded by subsection C to include plans ***maintained*** by a tax-exempt organization, it nevertheless requires that the plan be ***established*** by a church or a convention or association of churches. In other words, if a church does not establish the plan, the inquiry ends there. If, on the other hand, a church establishes the plan, the remaining sections of the church plan definition are triggered.

Kaplan v. Saint Peter's Healthcare Sys., No. 13-2941, 2014 WL 1284854, at *5 (D.N.J. Mar. 31, 2014) (emphases in original).

St. Peter's responds by arguing that the language of § 3(33)(C)(i), which says that a plan "established and maintained" by a church "includes" a plan "maintained" by a qualifying church agency, means that any plan maintained, even if not established, by such an agency is exempt. This would be persuasive if there

were only one requirement—maintenance—for an exemption. But here we have two requirements—establishment and maintenance—and only the latter is expanded by the use of "includes."

Indeed, St. Peter's essentially conceded the problem with its reading at oral argument when presented with the following scenario: Congress passes a law that any person who is disabled and a veteran is entitled to free insurance. In the ensuing years, there is a question about whether people who served in the National Guard are veterans for purposes of the statute. To clarify, Congress passes an amendment saying that, for purposes of the provision, "a person who is disabled and a veteran includes a person who served in the National Guard." Asked if a person who served in the National Guard but is not disabled qualifies to collect free insurance, St. Peter's responded that such a person does not because only the second of the two conditions was satisfied. This correct response only serves to highlight the fatal flaw in the construction of ERISA advanced by St. Peter's.

V. Canons of Construction

Various canons of statutory construction add to the problems with the reading proposed by St. Peter's. First, if St. Peter's were right, the church establishment requirement in § 3(33)(A) would be superfluous. That is because any plan, regardless of who established it, would be eligible for an exemption as long as it is maintained by an entity that meets the requirements of § 3(33)(C)(i). Creating such superfluous language is a result we attempt to avoid when construing a statute. *See Bennett v. Spear*, 520 U.S. 154, 173 (1997) (noting that it is a "cardinal principle of statutory construction" to "give effect, if possible,

to every clause and word of a statute") (internal quotation marks omitted). This is particularly so where a contrary reading would "nullif[y]" a statute's "careful limitation." *Id.* Here, Congress carefully limited the church plan exemption to only those plans established by a church. In interpreting the statute, we must give meaning to this limitation.

Second, in cases where Congress "includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted). This canon is known as *expressio unius est exclusio alterius* (to express one is to exclude others). Here, Congress could have said that a plan "established and maintained" by a church includes a plan "established and maintained" by a church agency. But the final legislation did not say that. Tellingly, however, draft legislation introduced in 1978 by Representative Barber B. Conable, Jr. to amend the Internal Revenue Code had precisely that language. *See Kaplan*, 2014 WL 1284854, at *9 n.4 (quoting 124 Cong. Rec. 12108 (May 2, 1978)). If Representative Conable's text had been adopted, it would be quite clear that church establishment of a plan would no longer be a prerequisite for the exemption. But by the time Congress passed the 1980 ERISA amendments, the second "established" was gone.[7] This deletion from one version to another

---

[7] Viewed in light of the purpose of the provision, the use of the current language rather than Rep. Conable's version makes sense. As discussed in Part VI below, the purpose of § 3(33)(C)(i) was not to deal with a plan established and maintained by a church agency but rather to account for a plan established by

"is fairly seen . . . as a deliberate elimination of any possibility" of construing the statute to have the meaning it would have had in the rejected version. *Doe v. Chao*, 540 U.S. 614, 623 (2004).

Third, we have noted that ERISA is a "remedial" statute that should be "liberally construed in favor of protecting the participants in employee benefit plans." *IUE AFL-CIO Pension Fund v. Barker & Williamson, Inc.*, 788 F.2d 118, 127 (3d Cir. 1986). As certain of the *amici* explain, exempt church plans lack many of the protections associated with ERISA. Features that ERISA plans have that church plans need not follow include fiduciary duties and minimum-funding protections. *See, e.g.*, Nat'l Emp't Lawyers Assoc. & AARP Found. *Amicus* Br. at 11–19. Excluding plans established by church agencies could take a large number of employees outside the scope of these ERISA protections. For instance, as of 2012 religiously affiliated hospitals accounted for seven of the country's ten largest non-profit healthcare systems. ACLU & Americans United for Separation of Church and State *Amicus* Br. at 22. As the District Court noted, construing plans established by church hospitals to be exempt "would achieve quite the opposite" result of the canon directing us to construe exemptions narrowly. *Kaplan*, 2014 WL 1284854, at *6.

St. Peter's, for its part, contends that a fourth canon, construing provisions in light of their statutory neighbors, favors its reading. Specifically, it points to ERISA's governmental plan exemption. ERISA § 3(32), 29 U.S.C § 1002(32), defines an exempt governmental plan to mean "a plan established or

---

a church and maintained by its pension board (*i.e.*, a church agency).

maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." The provision goes on to say that an exempt governmental plan "includes," among other options, certain plans to which the Railroad Retirement Act of 1935 applies and certain plans "established and maintained" by Native American tribal governments. St. Peter's uses this as an example of an instance in which the initial definition of an exempt plan is enlarged through the use of "includes."

But the governmental plan provision hurts, not helps, St. Peter's. It shows that Congress considers "established" and "maintained" to be different terms, as either is sufficient for the plans of the federal government and state governments, but both are required for Native American tribal plans. For the church plan exemption before us, Congress did not, as it did with plans of the federal government and state governments, say that either establishment or maintenance is sufficient for ERISA exemption. Rather, Congress explicitly required both (subject to the caveat that the second requirement could be met in the case of a plan maintained by a qualifying church agency).

* * *

In this context, even if St. Peter's may maintain an exempt church plan,[8] it cannot establish one. The

---

[8] Although we need not decide the issue, we have substantial reservations over whether St. Peter's can even maintain an exempt plan. Subsection 3(33)(C)(i) requires that if a plan is to be maintained by an organization that is not a church, it must be an organization "the principal purpose or function of which is the administration or funding of a plan or program for the provision

plain terms of ERISA only make these exemptions available to plans established in the first instance by churches. Because St. Peter's is not a church, the exemption is unavailable, and it is not entitled to dismissal of Kaplan's complaint on that basis.

VI. Legislative History

Because the terms of the statute are unambiguous, we need go no further. However, because the parties have devoted considerable resources to briefing and arguing the legislative history of the church plan exemption, we turn to it now. Even if the statute were ambiguous and the legislative history bore on our analysis, the result would be the same. Indeed, the legislative history of § 3(33) reinforces our conclusion that the exemption is only available to plans established by churches. Specifically, that history demonstrates that the purposes of the 1980 amendments were to account for plans established by churches but maintained by church agencies (hence the adoption of

---

of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches . . . ." In addition, the same subsection requires that the organization be "controlled by or associated with a church or a convention or association of churches." Setting aside whether St. Peter's is controlled by or associated with a church (as that depends on disputed facts not properly resolvable at the motion-to-dismiss stage), St. Peter's itself does not appear to meet the principal purpose test, as its principal purpose is the provision of healthcare and not the administration or funding of the retirement plan. St. Peter's contends, however, that its Retirement Plan Committee qualifies because the Committee's principal purpose is to maintain the plan. However, this may be insufficient. *See Rollins*, 19 F. Supp. 3d at 914 ("[T]he statute does not say that the organization may have a subcommittee who deals with plan administration. Rather, the statute dictates that [the] organization itself must have benefits plan administration as its 'principal purpose,' which Dignity plainly does not.").

§ 3(33)(C)(i)) and to extend the sunset provision set to take effect at the end of 1982 (thus the adoption of § 3(33)(C)(ii)).

St. Peter's places great emphasis on the following floor statement from Senator Herman Talmadge, a co-sponsor of the 1980 church plan amendments, regarding the purpose of the 1980 language:

> Church agencies are essential to the churches' mission. They are for the sick and needy and disseminate religious instruction. They are, in fact, part of the churches. As a practical matter, it is doubtful that the agency plans would survive subjection to ERISA. There is an essential difference between the plans of business[es] and the plans of church institutions. If a business incurs increased plan maintenance costs, it merely passes these on to the consumer. The incomes of most church agencies, on the other hand, are dependent solely upon tithes and other offerings. There is virtually no way for them to compensate for the additional costs of complying with ERISA. The churches fear that many of the agencies would abandon their plans. We are concerned today that the requirements of ERISA [have] made the maintenance of plans too expensive and demanding even for businesses which have the capacity to absorb additional costs. The impact of ERISA on church agencies would be many times as serious as that on businesses.

JA 122.[9]

---

[9] "JA" refers to the parties' joint appendix.

St. Peter's contends that this statement makes clear that Congress was focused on plans established by church agencies. Not so. Rather, the context demonstrates that Senator Talmadge's real concern was the sunset provision set to take effect at the end of 1982. As discussed, the initial definition of a church plan was one "established and maintained for its employees by a church." Existing plans established and maintained by churches were allowed to cover employees of church agencies, but only until the end of 1982. This was not a question of who established and maintained the plans, as only churches could. Instead, the issue was that no exempt plans would be allowed to cover agency employees after 1982 (unless the agency itself qualified as a church). Indeed, Senator Talmadge made the comments above in the context of explaining why churches, after 1982, would need to "divide their plans into two so that one will cover church employees and the other . . . agency employees." *Id.* Absent an amendment, the plans in the latter category would not qualify for the exemption. That was the real threat to plans covering agency employees.

The reliance of St. Peter's on statements by Deputy Assistant Secretary of the Treasury Daniel Halperin during a hearing on the proposed legislation is similarly misplaced. St. Peter's highlights his statement that Treasury's "most serious concern" was that the amendments "would exclude church agencies from the protection of ERISA, and that would mean that if somebody works for a hospital or a school that happens to be affiliated with a church it would be permissible for that plan to provide no retirement benefits unless they work until age 65, for example." Appellants' Addendum at 8. This does not help St. Peter's. Assistant Secretary Halperin was merely pointing out that, if the sunset provision took effect, employees of

church agencies could not be included within the then-existing exemption, and a plan covering them would instead be subject to ERISA even if a church itself established it. However, nothing in the statement connotes that plans *established by church agencies* would be eligible for the exemption.

Similarly, St. Peter's does not benefit from the statement of Senator Jacob Javits, the general sponsor of the legislation in which the 1980 amendments were included. Senator Javits said that he was "not too happy" that the amendments would exempt "those who work for schools and similar institutions which are church-related." JA 1524. Again, this relates to Congress' decision not to allow the sunset provision to take effect.

More to the point, the legislative history demonstrates that the purpose of § 3(33)(C)(i), the statutory provision on which St. Peter's most heavily relies, was to bring explicitly within the exemption plans established by churches but maintained by church agencies known as pension boards. Senator Talmadge explained that "the church plan definition is so narrowly drawn that it does not in many ways even approximate the way church plans are organized or operated." JA 122. He mentioned congregational, as opposed to hierarchical, denominations, noting: "Most church plans of congregational denominations are administered by a pension board. This is usually an organization separately incorporated from, but controlled by, the denomination." *Id.* There was some confusion as to whether such a structure qualified for an exemption. *Id.* As Senator Talmadge explained to the Senate Committee on Finance, the amendments dealt with that issue by expanding the definition to include "church plans which rather than being

maintained directly by a church are instead maintained by a pension board maintained by a church." Senate Committee on Finance, Executive Session Minutes, June 12, 1980, at 40.

St. Peter's, despite a lengthy discussion of legislative history, has not pointed to a single statement showing that Congress, in addition to being concerned about the sunset provision and plans maintained by pension boards (*i.e.*, church agencies), was also focused on plans *established* by those agencies. Rather, that history overwhelmingly supports the conclusion that Congress did not intend to open up the exemption that broadly.

VII. IRS Rulings

St. Peter's also seeks to imbue with considerable weight the interpretation that the IRS has given to the church plan definition. As discussed, the Internal Revenue Code gets its definition of church plans from ERISA. Construing the initial 1974 definition, the IRS took the position that healthcare companies with religious missions were not eligible for the church plan exemption because they were not performing sufficiently religious functions. I.R.S. Gen. Couns. Mem. 37,266 (Sept. 22, 1977). Essentially, the IRS' position was that only church agencies that themselves could qualify as churches could establish exempt plans.

But the IRS changed course in 1983 based on its interpretation of the 1980 amendments and began issuing exemptions to plans that were not established by churches. A 1983 IRS memorandum stated that because "religious orders can now have their employees covered by a church plan without a determination that such orders are churches, [an order's] nonchurch status is not fatal." I.R.S. Gen. Couns. Mem. 39,007

(July 1, 1983). According to St. Peter's, the IRS has issued at least several hundred exemptions based on that reasoning. And, as discussed, St. Peter's itself received an exemption from the IRS in 2013, after this lawsuit was filed. St. Peter's also notes that the Department of Labor has issued several exemptions of its own based on the IRS' position.

However, because the IRS' position came in a general counsel memorandum and not as a result of "formal adjudication or notice-and-comment rule-making," its interpretation is owed deference "only to the extent that [it has] the power to persuade." *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (internal quotation marks omitted). The IRS' 1983 memorandum lacks the power to persuade because it does not even consider the church establishment requirement of § 3(33)(A). Rather, it skips directly (and inexplicably) to § 3(33)(C). Because the IRS' position is at odds with the statutory text, we owe it no deference.

VIII. Congressional Ratification

St. Peter's also advances a congressional ratification argument. Specifically, it notes that, following the IRS' 1983 memorandum, Congress has incorporated the church plan definition from the 1980 amendments into a variety of other laws. *See, e.g.*, 26 U.S.C. § 4980D(b)(3)(C) (excluding church plans from certain minimum excise taxes imposed on health plans); 15 U.S.C. § 80a-3(c)(14) (excluding church plans from the definition of investment companies under the Investment Company Act of 1940). From this, St. Peter's contends that Congress legislated against the backdrop of the 1983 IRS memorandum and should be presumed to have approved that interpretation when reusing the definition.

It is true as a general matter that when it "adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). However, in *Lorillard* "Congress exhibited . . . a detailed knowledge of the [statutory] provisions and their . . . interpretation." *Id.* St. Peter's has not shown any evidence that Congress had such a detailed knowledge in this case. Moreover, ratification does not apply where, as is the case here, the statute has a plain meaning that is inconsistent with the proposed interpretation. *Dutton v. Wolpoff & Abramson*, 5 F.3d 649, 655 (3d Cir. 1993). As a result, ratification cannot salvage things for St. Peter's.

IX. Free Exercise Clause

Finally, St. Peter's raises an argument under the First Amendment's Free Exercise Clause. It asserts that failing to adopt its position would create constitutional "[i]ssues." Appellants' Br. at 47. It is not clear whether St. Peter's is invoking the doctrine of constitutional avoidance or is instead raising a full-blown constitutional challenge. In any event, the argument fails. St. Peter's bases its constitutional concerns on the premise that, if church agencies cannot establish their own plans, the IRS will be forced, in considering requests for exemptions, to determine on an individualized basis whether particular agencies are performing sufficiently religious functions such that they can themselves qualify as churches. This is the approach the IRS took to agency-established plans prior to the 1983 memorandum. The argument misses the point. Churches and agencies can avoid this inquiry altogether by having a church establish the

plan in the first instance. Plans established by churches are explicitly permitted under § 3(33)(C)(ii) to cover agency employees.

St. Peter's has not offered any reason why the First Amendment entitles it to a retirement plan structured using a particular corporate form. The ability of church agencies to have their employees covered by exempt plans is by no means eliminated by our reading. We have merely determined that Congress has required that such coverage come in the form of plans established by churches. Even assuming that St. Peter's has a constitutional right to have its employees covered by an exempt plan, this arrangement does not unduly interfere with that.

Moreover, to the extent that St. Peter's also suggests that Congress cannot validly distinguish between churches and church agencies, that argument is unpersuasive. Indeed, Congress regularly applies provisions to churches without reference to church agencies. *See, e.g.*, 26 U.S.C. § 514(b)(3)(E) (creating a special rule for churches with respect to real property acquired for tax-exempt use); 26 U.S.C. § 170(b)(1)(A)(i) (allowing deductions for charitable contributions to churches). *See also Priests for Life v. U.S. Dep't of Health & Human Servs.*, 772 F.3d 229, 272 (D.C. Cir. 2014), *cert. granted*, 84 U.S.L.W. 3257 (U.S. Nov. 6, 2015) (No. 14-1453) (describing the distinction between "churches . . . and nonprofit organizations that may have a religious character or affiliation, such as universities and hospitals" as "long-recognized" and "permissible"); *Found. of Human Understanding v. United States*, 614 F.3d 1383, 1389 (Fed. Cir. 2010) (noting, in context of 26 U.S.C. § 170(b)(1)(A)(i), the "generally accepted principle" that Congress intended

to distinguish between churches and other religious organizations).

* * *

In interpreting a statute, we presume that Congress means what it says. Ever since it enacted ERISA in 1974, establishment of a pension plan by a church has been a prerequisite to triggering the exemption from ERISA. Nothing in the 1980 amendments changed that. St. Peter's sought dismissal of the putative class action on the ground that its plan qualifies for the church plan exemption. However, that exemption is unavailable here, as the plan was not established by a church. We therefore affirm the District Court's denial of the motion to dismiss.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Filed 03/18/2016]

No. 15-1172

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated

v.

SAINT PETER'S HEALTHCARE SYSTEM; RONALD C. RAK; SUSAN BALLESTERO, an individual; GARRICK STOLDT, an individual; JOHN and JANE DOES 1–20

Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero, Garrick Stoldt,

Appellants

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3-13-cv-02941)
District Judge: Honorable Michael A. Shipp

Before: McKEE, *Chief Judge,* AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, Jr., VANASKIE, SHWARTZ, and KRAUSE, *Circuit Judges*

SUR PETITION FOR REHEARING

The petition for rehearing filed by Appellants in the above-entitled case having been submitted to the

judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court *en banc*, is denied.

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: March 18, 2016

clw/tyw/cc: Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Katherine M. Lieb, Esq.
Monya M. Bunch, Esq.
Karen L. Handorf, Esq.
Ron Kilgard, Esq.
Lynn L. Sarko, Esq.
Matthew A. Smith, Esq.
Hivila C. Unrein, Esq.
Michelle C. Yau, Esq.
Patrick C. Elliott, Esq.
Gregory M. Lipper, Esq.
Daniel Mach, Esq.
Mark E. Chopko, Esq.
Jeremy P. Blumenfeld, Esq.
Melissa D. Hill, Esq.
Jared M. Haynie, Esq.
James A. Sonne, Esq.
Mary E. Signorille, Esq.
Hugh S. Balsman, Esq.
Roberta L. Steele, Esq.
Richard H. Frankel, Esq.

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed 03/31/14]

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

MEMORANDUM OPINION

SHIPP, *District Judge*

This matter comes before the Court upon the motions of Defendants Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero, and Garrick Stoldt (collectively, "SPHS" or "Defendants") pursuant to Federal Rules of Civil Procedure ("Rule") 12(b)(1) and 12(b)(6). (Defs.' Br., ECF No. 42-1.) Plaintiff Laurence Kaplan ("Plaintiff" or "Mr. Kaplan") opposed Defendants' motions (Pl.'s Opp'n, ECF No. 48) and Defendants replied (Defs.' Reply, ECF No. 54).

Plaintiff brought this putative class action on behalf of participants and beneficiaries of the Saint Peter's Healthcare System Retirement Plan (the "Plan"), alleging that the Plan is being improperly maintained by SPHS as a "church plan" under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq*. This case requires the Court to determine the metes and bounds of ERISA's church plan exemption, as defined in 29 U.S.C. § 1002(33). The Court, in particular, must determine whether a non-profit healthcare corporation may establish and maintain a church plan if it is controlled by or associated with a church. If answered in the affirmative, the Court must then determine whether this interpretation of the church plan definition violates the Establishment Clause of the United States Constitution.

After carefully considering the Parties' submissions and hearing oral argument on March 27, 2014, the Court holds that, as a matter of law, SPHS's employee pension Plan is not a church plan. Therefore, for the reasons set forth below and other good cause shown, Defendants' Motion to Dismiss is DENIED.

I. BACKGROUND

A. Overview of the Employee Retirement Income Security Act

In 1974, Congress passed ERISA, which "is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). It is a federal law that regulates private industry pension plans, retirement plans, profit-sharing plans and health insurance coverage. For such

plans, ERISA establishes rules and minimum standards that are meant to protect plan participants. Nothing in ERISA mandates employers to create these plans; it only sets the standards for those that choose to establish them.

In alignment with its purpose, ERISA "seek[s] to ensure that employees will not be left empty handed once employers have guaranteed them certain benefits." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). "To increase the chances that employers will be able to honor their benefits commitments—that is, to guard against the possibility of bankrupt pension funds—Congress incorporated several key measures into ERISA." *Id.* These measures include, among other things, minimum funding and vesting requirements for all ERISA covered plans and rules concerning reporting, disclosures, and fiduciary responsibilities. *See, e.g.*, 29 U.S.C. § 1082.

Although private sector employee benefit plans typically come under ERISA's purview, there are limited exemptions. One such exemption is the church plan. Church plans were exempted from ERISA because the examination of a church's books by the government might be regarded as "an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities." Report of Senate Finance Comm., No. 93-383 (Aug. 21, 1973). As a result, a church plan is exempt from ERISA's requirements unless an election is made under the Internal Revenue Code ("IRC"), 26 U.S.C. § 410(d). 29 U.S.C. § 1003(b)(2).

B. The Plan

SPHS is a non-profit healthcare corporation headquartered in New Brunswick, New Jersey. (Compl.,

ECF No. 1, ¶¶ 25, 44.) According to Plaintiff, SPHS does not receive funding from the Catholic Church or other religious entities but, instead, relies on revenue bonds to raise money. (*Id.* ¶¶ 47, 49, 85.) SPHS owns Saint Peter's University Hospital and Saint Peter's Health and Management Services Corporation, among other companies. (*Id.* ¶ 44.) SPHS employs over 2,800 people and, in 1974, established the Plan, which is a non-contributory defined benefit pension plan. (*Id.* ¶¶ 25, 45, 56, 68; *see also id.* ¶¶ 61-62, 66-67, 70-72.) For over thirty years, the Plan was operated as an ERISA plan—meaning, it complied with ERISA's requirements regarding funding, reporting, and insurance premiums paid to the Pension Benefit Guarantee Corporation ("PBGC")—and represented such to its employees via Plan documents and other written materials. (*Id.* ¶¶ 56-57.)

In 2006, during the rise of the nationwide economic downturn, SPHS "concluded that [its Plan] was a church plan" and proceeded to file an application for church-plan status with the Internal Revenue Service ("IRS"). (*Id.* ¶ 58.) Meanwhile, SPHS continued to pay insurance premiums to PBGC as an ERISA plan. (*Id.*) Notwithstanding its IRS application, SPHS waited until November 2011 to notify its employees of its application for church-plan status. (*Id.* ¶ 59.) On August 14, 2013, in a private letter ruling, the IRS concluded that SPHS's Plan is a church plan as defined in ERISA.[1] (Stoldt Supplemental Cert., ECF No. 45-1, Ex. A.)

C. Plaintiff's Grievance

Mr. Kaplan is one of many current or former employees of SPHS purportedly affected by SPHS's

[1] SPHS received this ruling after the Complaint was filed.

alleged conversion of its Plan from an ERISA plan to a church plan, exempt from ERISA. (Compl. ¶ 24.) Mr. Kaplan worked for SPHS from 1985-1999. (*Id.*) He is a participant in the Plan maintained by SPHS because he is or will be eligible for pension benefits under the Plan. (*Id.*) Mr. Kaplan brings this action, pursuant to Rule 23(b)(1) and (b)(2), on behalf of himself and others who are participants or beneficiaries of "any Plan operated or claimed by [SPHS] to be a [c]hurch [p]lan as of [May 7, 2013,]" the date of the Complaint. (*Id.* ¶ 95.)

Plaintiff's principal grievance is that SPHS is improperly maintaining its Plan to the detriment of its employees. (*Id.* ¶ 2.) Strictly speaking, he alleges that SPHS is employing church-plan status to evade ERISA's various requirements including underfunding the Plan by over $70 million. (*Id.* ¶¶ 14, 65.) Mr. Kaplan's concerns are manifested in his eight-count Complaint, alleging various ERISA violations including violations of ERISA's requirements for reporting and disclosure, minimum funding, establishment of a trust, and for breach of fiduciary duties. He seeks, among other things, an order declaring that the Plan is not a church plan exempt from ERISA or, in the alternative, that the church plan exemption, as claimed by SPHS, is an unconstitutional accommodation under the Establishment Clause.[2]

II. DISCUSSION

Defendants move to dismiss Plaintiff's claims on two grounds: (1) lack of subject matter jurisdiction, pursuant to Rule 12(b)(1), for Plaintiff's claims arising under ERISA; and (2) failure to state a claim for which

---

[2] The United States has filed a Notice to Intervene regarding Plaintiff's constitutional claim. (ECF No. 56.)

relief can be granted, pursuant to Rule 12(b)(6), regarding Plaintiff's Establishment Clause claim. The Court will address each ground, in turn.

A. The Court Has Subject Matter Jurisdiction of Plaintiff's ERISA Claims

Before proceeding to review the merits of a case, the Court has a duty to assure itself that it has subject matter jurisdiction. Plaintiff alleges that the Court has subject matter jurisdiction pursuant to 29 U.S.C. § 1132(e)(1) for his claims brought under Title I of ERISA and 28 U.S.C. § 1331 based on a federal question. (Compl. ¶ 19.) Defendants do not dispute the Court's federal question jurisdiction as to Plaintiff's constitutional claim, but instead challenge subject matter jurisdiction of Plaintiff's ERISA claims. (Defs.' Br. 14.)

A defendant may challenge the court's subject matter jurisdiction with either a facial or factual attack. *See Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000), *modified by Simon v. United States*, 341 F.3d 193, 195 (3d Cir. 2003). Defendants have launched a factual attack, appending various extrinsic certifications and exhibits to their motion. (*See* ECF No. 42.) The extrinsic documents purportedly support their position that SPHS's Plan is a church plan exempt from ERISA and, therefore, outside of this Court's subject matter jurisdiction. (*See* Defs.' Br. 14-33.)

> As amended in 1980, the current definition of a church plan provides, in pertinent part:
>
> (A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a

church or by a convention or association of churches which is exempt from tax under section 501 of Title 26.

* * * *

(C) For purposes of this paragraph—

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of Title 26 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of Title 26 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

* * * *

29 U.S.C. § 1002(33).[3]

1. Parties' Positions

According to SPHS, its Plan is a church plan exempt from ERISA for two primary reasons: (1) because SPHS and its Retirement Plan Committee, charged with maintenance of the Plan, are controlled by and associated with the Roman Catholic Church, as outlined under § 1002(33)(C)(i); and (2) because SPHS's employees are considered employees of the Roman Catholic Church under § 1002(33)(C)(ii)(II). (Defs.' Br. 1, 21.)

At the base of SPHS's factual assertions, however, is a significant legal one: that a pension plan established and maintained by a tax exempt corporation controlled by or associated with a church is a church plan. (Defs.' Br. 15.) Plaintiff not only disputes Defendants' factual assertions, but his interpretation of the church plan definition differs in that he reads the definition

[3] The IRC contains a virtually identical definition. *See* 26 U.S.C. § 414(e).

as allowing only a church or a convention or association of churches—which SPHS is not—to establish and maintain a church plan. (Pl.'s Opp'n 1-2.) Despite their different interpretations of the church plan definition, neither party asserts that the definition is ambiguous. (*See* Defs.' Br. 17; Pl.'s Opp'n 10-11.)

The Parties' dispute is one centered on, and resolved by, the statutory construction of ERISA's church plan definition, to which the Court now turns.

2. SPHS's Plan is Not a Church Plan

When interpreting a statute, a court "must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). To ascertain Congress' intent, the Court "begin[s] with the language of the statute. The first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'" *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)); *accord United States v. Cooper*, 396 F.3d 308, 310 (3d Cir. 2005). Where the text provides a clear answer to the interpretive question, the analysis ends there as well. *Cooper*, 396 F.3d at 310 (citing *Steele v. Blackman*, 236 F.3d 130, 133 (3d Cir. 2001)). "In all events, it is not [the Court's] task to assess the consequences of each approach and adopt the one that produces the least mischief. [The Court's] charge is to give effect to the law Congress enacted." *Lewis v. City of Chicago*, 560 U.S. 205, 217 (2010).

a) *Plain Text Analysis*

As previously stated, the interpretive question here is whether a non-profit entity, purportedly controlled

by or associated with a church, may both establish and maintain a church plan. Based on the plain text of the statute, the simple answer is no. Starting with subsection A, it is clear that Congress intended for a church plan—first and foremost—to be *established* by a church. Once the church establishes the plan, the church must also *maintain* it. From these two requirements, a church plan is born—hence, "[t]he term 'church plan' *means* a plan established and maintained . . . by a church or by a convention or association of churches . . . ." 29 U.S.C. § 1002(33)(A) (emphasis added). However, in subsection C(i), Congress expanded the maintenance requirement outlined in subsection A: a church plan, as defined in subsection A,

> includes a plan ***maintained*** by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

29 U.S.C. § 1002(33)(C)(i) (emphasis added). Put differently, Congress has explicitly provided two ways to fall within the church plan exemption: (1) a plan established and maintained by a church, or (2) a plan established by a church and maintained by a tax-exempt organization, the principal purpose or function of which is the administration or funding of the plan, that is either controlled by or associated with a church. Once a church plan is established in one of these ways, subsection C(ii) delineates what individuals may

participate in the church plan as employees of the church.

The key to this interpretation is to recognize that subsection A is the gatekeeper to the church plan exemption: although the church plan definition, as defined in subsection A, is expanded by subsection C to include plans ***maintained*** by a tax-exempt organization, it nevertheless requires that the plan be ***established*** by a church or a convention or association of churches. In other words, if a church does not establish the plan, the inquiry ends there. If, on the other hand, a church establishes the plan, the remaining sections of the church plan definition are triggered.

b) *SPHS's Interpretation*

Defendants, nevertheless, argue that the definition does not mean what it says. To bolster its more general argument that a tax-exempt organization controlled by or associated with a church may establish and maintain a church plan, SPHS grasps upon two specific propositions. SPHS first highlights the fact that ERISA does not define the term "church." (Defs.' Br. 17.) To fill this statutory crevice, SPHS provides its own definition to show that its Plan meets the requirements of the church plan exemption. According to SPHS, reading subsection C "into" subsection A, "a 'church' for the purposes of the statute is broader than simply an institution for religious worship[.]" (*Id.* at 18.) Specifically, SPHS asserts that subsection C expands the definition of a church to include "any federally tax exempt corporation controlled by or in association with such an institution that establishes and maintains a retirement plan for its employees, and a retirement plan established by the corporation for those employees is a church plan." (*Id.*) At oral

argument, Defendants further justified their interpretation by contending that Plaintiff's interpretation would render the term "includes" in subsection C(i) and the entirety of subsection C meaningless. (Mar. 27, 2014 Rough Tr. 22:11-24; *see also* Defs.' Resp. to Pl.'s 2d Notice, ECF No. 59, 3-5.) SPHS's interpretation, however, is contrary to the plain text and the Court will address each of Defendant's arguments, in turn.

First, when interpreting a statute, the Court must be guided by the principle that Congress says what it means and means what it says. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000); *In re Phila. Newspapers, LLC*, 599 F.3d 298, 304 (3d Cir. 2010). It is no secret that ERISA is an "enormously complex and detailed statute[.]" *Conkright v. Frommert*, 559 U.S. 506, 509 (2010). As such, the Court concludes that Congress was cautious in crafting the definition of a church plan and therefore the definition means what it says—that a church plan must, from the outset, be established by a church and can be maintained by an organization controlled by or associated with a church. In essence, Defendants urge the Court to read subsection C(i) as follows:

> A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan **[established and]** maintained by an organization, whether a civil law corporation or otherwise . . . if such organization is controlled by or associated with a church or a convention or association of churches.

Congress could have added this language to subsection C, but decidedly did not. To be sure, Congress made the above distinction in the definition of a "governmental plan," which is the definition immediately preceding the church plan definition. The governmental plan definition states, in pertinent part:

> The term "governmental plan" means a plan established ***or*** maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, *or* by any agency or instrumentality of any of the foregoing . . . . The term "governmental plan" includes a plan which is established ***and*** maintained by an Indian tribal government . . . a subdivision of an Indian tribal government . . . ***or*** an agency or instrumentality of either[.]

29 U.S.C. § 1002(32) (emphasis added).

Second, Defendants' interpretation ignores—and renders superfluous—Section A which requires a church to establish a church plan. *See Alexander v. Riga*, 208 F.3d 419, 430 (3d Cir. 2000) (when interpreting a statute, a court must give effect, if possible, to every word and clause of a statute). If the Court were to accept SPHS's interpretation, any tax-exempt organization can establish its own pension plan, maintain it, and then employ the church plan exemption by purporting to be controlled by or associated with a church. In this context, a tax-exempt organization itself would have to be considered a church under the statute because a church is the only entity allowed to establish a church plan. Defendants' contention in this regard is unreasonable. The Court cannot conclude that Congress intended to create this slippery slope, especially considering that the point of

enacting ERISA was to promote the interest of employees and their beneficiaries. Opening the door to expand the church plan exemption to this extent would place more employees at risk of having insufficient benefits upon retirement. What must be kept in mind is that ERISA is a remedial statute, so any exemptions included thereunder should be construed narrowly. *See Rodriguez v. Compass Shipping Co.*, 451 U.S. 596, 614 n.33 (1981). Defendants' interpretation would achieve quite the opposite.

On the other hand, Defendants insist that Plaintiff's and the Court's interpretation of the definition would render the term "includes," as provided in subsection C(i), meaningless. The Court disagrees. The Court's interpretation expands the definition of a church plan for the limited purpose of allowing a plan that is first established by a church to include a plan that is maintained by a tax-exempt organization. The term "includes" merely provides an alternative to the maintenance requirement but does not eliminate the establishment requirement. In addition, the Court's interpretation does not render the entire subsection of C meaningless. As stated above, after a church establishes a plan, subsection C provides clarity as to who can participate in the church's plan and the requirements for a tax-exempt organization, other than the church, to maintain a church-established plan. Defendants' interpretation would expand the church plan definition to untenable bounds and, in the process, change the plain text of the statute.

Third, when examining the text of a statute, the Court must interpret statutory words as taking their ordinary, common meaning unless otherwise defined by Congress. *See Perrin v. United States*, 444 U.S. 37, 42 (1979). The Court does not venture to define

"church" but, needless to say, the Court cannot conclude that Congress intended for a tax-exempt agency, controlled by or associated with a church, to be considered a church under the statute. Despite SPHS's own definition of a church, it does not appear to be arguing that it is a church. (*See* Defs.' Br. 18; *see also* Defs.' Resp. to Pl.'s 2d Notice 5.) This became evident at oral argument when it seemingly retreated from its original position. (Mar. 27, 2014 Rough Tr. 24:5-7.)

Finally, the Court's reading of the statute is consonant with the two appellate decisions that have addressed the church plan definition. In both *Lown v. Continental Casualty Co.*, 238 F.3d 543 (4th Cir. 2001) and *Chronister v. Baptist Health*, 442 F.3d 648 (8th Cir. 2006), the Fourth and Eighth Circuits concluded that the entities at issue did not meet the definition of a church plan based on factual findings. *See Lown*, 238 F.3d at 548 (considering whether a disability plan was a church plan, but finding that Baptist Healthcare and the South Carolina Baptist Convention mutually ended their affiliation); *Chronister*, 442 F.3d at 652 (finding that Baptist Health severed its ties with the Arkansas Baptist State Convention in 1966). The courts were not faced with the legal issue present before the Court and therefore did not need to address it.

Furthermore, the case law relied upon by Defendants is unpersuasive. Defendants primarily rely on *Thorkelson v. Publishing House of Evangelical Lutheran Church*, 764 F. Supp. 2d 1119 (D. Minn. 2011), for the proposition that a tax-exempt organization controlled by or associated with a church can establish and maintain a church plan. (Defs.' Br. 23,

30.) In *Thorkelson*, plaintiffs made the same arguments as Mr. Kaplan—that the benefit plan for defendant Augsburg Fortress Publishers ("AFP"), a non-profit publisher for the Lutheran Church, was not a church plan because it was sponsored by AFP. *Thorkelson*, 764 F. Supp. 2d at 1125. Interpreting the church plan definition, the court concluded that AFP's plan was a church plan exempt from ERISA. *Id.* at 1126. Even though plaintiff conceded that AFP was controlled by the Lutheran Church, the court focused its statutory analysis on whether the plan was sponsored by a tax-exempt entity that is controlled by or associated with a church. *Id.* at 1126-27. However, its interpretation did not apply § 1002(33)(A), which requires—from the outset—a plan to be established by a church. The court also noted that defendants' position was supported by case law and agency decisions of the IRS and Department of Labor ("DOL"). *Id.* at 1125.

On the other hand, a recent decision from the Northern District of California is more persuasive. In *Rollins v. Dignity Health*, No. C13–1450 TEH, 2013 WL 6512682 (N.D. Cal. Dec. 12, 2013), plaintiff brought similar ERISA claims as Mr. Kaplan, alleging that defendant's pension plan was not a church plan because it was sponsored by a non-profit healthcare organization and not a church. *Rollins*, 2013 WL 6512682, at *2. After a thorough analysis of the statutory text, the court concluded that

> notwithstanding section C, which permits a valid church plan to be maintained by some church-affiliated organizations, section A still requires that a church establish a church plan. Because the statute states that a church plan may only be established "by a church or

> by a convention or association of churches," only a church or a convention or association of churches may establish a church plan. 29 U.S.C. 1002(33)(A). Dignity's effort to expand the scope of the church plan exemption to any organization maintained by a church-associated organization stretches the statutory text beyond its logical ends.

Id. at *5. The *Rollins* court's interpretation of the church plan definition is in accord with this Court's decision.

Defendants reiterate that *Thorkelson* is in alignment with thirty years of judicial decisions, but none of these previous decisions undertook a detailed statutory analysis of the church plan definition as Judge Henderson did in *Rollins*. Instead, these prior decisions often bypassed subsection A of the definition and immediately applied subsection C(i), made conflicting determinations regarding the limitations of C(i), or even misstated the text of subsection C(i). *See, e.g.*, *Rhinehart v. Life Ins. Co. of N. Am.*, No. C08-5486 RBL, 2009 WL 995715, at *2 (W.D. Wash. Apr. 14, 2009) (misquoting subsection A as providing that a church plan means a plan "established *or* maintained" by a church and concluding that subsection C(i) does not expand the definition of a church plan) (emphasis added); *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F. Supp. 2d 77, 85 (D. Me. 2004) (adding words to the plain text when it concluded that "ERISA brings a plan *established or* maintained by a non-church organization within the general definition of 'church plan' if that organization is 'controlled by' or 'associated with' a church") (emphasis added); *Friend v. Ancillia Sys. Inc.*, 68 F. Supp. 2d 969, 973 (N.D. Ill. 1999) (pre-*Lown* decision considering whether a

church plan is required to be maintained by an organization, the principal purpose of which is administering or funding the plan, and holding that this was not a requirement).

The Court finds that Plaintiff's interpretation of the church plan definition provides a common sense reading of the statute based on its plain text. Accordingly, for the foregoing reasons, which are dispositive, the Court finds, as a matter of law, that SPHS's Plan is not a church plan and that the Court has subject matter jurisdiction of Plaintiff's ERISA claims.

3. Legislative History Does Not Justify a Departure from the Plain Text

Both Parties seek refuge in the legislative history by pointing particularly to comments made on the congressional floor that purportedly support their reading of the statute. However, "where the text of a statute is unambiguous, the statute should be enforced as written and '[o]nly the most extraordinary showing of contrary intentions in the legislative history will justify a departure from that language.'" *In re Phila. Newspapers, LLC*, 599 F.3d at 314 (quoting *United States v. Albertini*, 472 U.S. 675, 680 (1985)). The Parties have not made such a showing here. *See Estate of Arrington v. Michael*, 738 F.3d 599, 606 (3d Cir. 2013) ("[S]elective invocation of fragments of the floor debate is an object lesson in the perils of appealing to . . . legislative history as a guide to statutory meaning . . . . The law is what Congress enacts, not what its members say on the floor.") (citations omitted).[4]

---

[4] The Court notes, however, that in 1978, when Representative Barber B. Conable, Jr. introduced a bill to amend the church plan definition in the Internal Revenue Code of 1954, the proposed

4. The IRS Private Letter Ruling Is Contrary to the Plain Text

Were the Court to conclude that the church plan definition is ambiguous as to what entity can establish and maintain a church plan, the Court could defer to an agency's reasonable interpretation of the statute. *See Chevron*, 467 U.S. at 842-43. Although the Court has determined Congress' intent based on the plain text, it seems appropriate to discuss the DOL and IRS private letter rulings; not only because SPHS has received an IRS private letter ruling on this issue, but because these rulings seem to be somewhat responsible for the overbroad application of the church plan exemption. *See* Gen. Counsel Mem. ("GCM") 39007 (July 1, 1983) (post-amendment interpretation of the church plan definition, which concluded that plans established and maintained by two Catholic orders—not churches—that operated nursing homes and hospitals, were church plans). Since the 1983 GCM, dozens of IRS private letter rulings have held that a church-related agency can establish its own church plan. The DOL has also issued advisory opinions on church-related agencies, concluding that their plans are church plans. *See, e.g.*, Advisory Op. 94-04A (Feb. 17, 1994) (interpreting the church plan definition as follows: "In accordance with Section 3(33)(C)(iii) . . .

---

language of what is now subsection C(i) read, in pertinent part: "A plan established and maintained by a church . . . shall include a plan *established and maintained* by an organization . . . ." 124 Cong. Rec. 12108 (May 2, 1978) (emphasis added). The subsequent 1980 amendment of the church plan definition excluded the word "established" from subsection C(i). *See, e.g.*, *Doe v. Chao*, 540 U.S. 614, 622 (2004) (acknowledging that "drafting history show[s] that Congress cut the very language in the bill that would have authorized any presumed damages").

the Church is deemed the employer of these individuals for purposes of the church plan definition in section 3(33); and the Church, as employer, *is deemed to have established and to maintain the Plans.*") (emphasis added).

Defendants argue that, "though not binding on the Courts, [these rulings] are entitled to deference in accord with their persuasive power" to the extent that they are reasonable and consistent with the text and legislative history. (Defs.' Br. 20; *see also id.* at 21-22.) In response, Plaintiff asserts that the agency determinations should not be given deference because they are inconsistent, unpersuasive, and interpret the statute differently than the courts. (Pl.'s Opp'n 15-16.) Defendants concede that courts and agencies interpret the church plan definition differently, but maintain that agency decisions are entitled to deference. (Defs.' Reply 5-6.) Moreover, Defendants assert that congressional silence regarding the church plan definition gives the agency decisions the force of law. (Mar. 27, 2014 Rough Tr. 6:5-10; 18:6-10.)

Although SPHS has received a private letter ruling, the Court cannot give it deference for several reasons. As an initial matter, the ruling conflicts with the plain text of the statute and is therefore unreasonable. "The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent." *See Chevron*, 467 U.S. at 843 n.9. Furthermore, the IRS private letter ruling is conclusory, lacking any statutory analysis, and cannot be used as precedent because the ruling was issued in a non-adversarial setting based on information supplied by SPHS. *See* 26 U.S.C. § 6110(k)(3); *see also Christensen v. Harris Cnty.*, 529 U.S. 576, 586-87 (2000) (pointing out that

an agency's opinion letters, policy statements, agency manuals, and enforcement guidelines – unlike regulations adopted through "formal adjudication or notice-and-comment rulemaking" – "do not warrant *Chevron*-style deference"). In addition, courts have long held that congressional silence, alone, in the wake of administrative rulings does not give the rulings the force of law. *See Brown v. Gardner*, 513 U.S. 115, 121-22 (1994) ("As we have recently made clear, congressional silence 'lacks persuasive significance,' . . . particularly where administrative regulations are inconsistent with the controlling statute . . . .") (citations and internal quotations omitted); *Aaron v. SEC*, 446 U.S. 680, 694 n.11 (1980) ("[I]t is our view that the failure of Congress to overturn the Commission's interpretation falls far short of providing a basis to support a construction . . . so clearly at odds with its plain meaning and legislative history.") (citation omitted); *Girouard v. United States*, 328 U.S. 61, 69 (1946) ("It is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law."); *cf. Lorillard, Div. of Loew's Theatres, Inc. v. Pons*, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it *re-enacts a statute without change* . . . .") (internal citations omitted) (emphasis added). The church plan definition has not been amended since 1980 and Defendants cannot now use congressional silence to turn agency rulings into law.[5]

---

[5] On this point, Defendants appear to make a secondary argument that when an agency, such as the IRS, is charged with the responsibility of administering a "congressional act," deference should be given to its rulings. (*See* Mar. 27, 2014 Rough Tr. 5:23-6:1.) However, Defendants have not cited any precedent showing that Congress delegated authority for the IRS to issue

For the reasons stated above, Defendants' motion to dismiss pursuant to Rule 12(b)(1) is denied.[6]

B. Violation of Establishment Clause of First Amendment

Plaintiff's Establishment Clause claim is based upon the Court finding that SPHS's Plan is a church plan as defined in ERISA. (Pl.'s Opp'n 32.) Because the Court finds that, as a matter of law, SPHS's Plan is not a church plan, it is unnecessary for the Court to address this claim. As such, Defendants' motion to dismiss pursuant to Rule 12(b)(6) is denied.

---

regulations to define terms within the ERISA church plan definition. *Compare Christopher v. Smithkline Beecham Corp.*, 132 S. Ct. 2156, 2162, 2165 (2012) (noting that Congress delegated authority to the DOL to issue regulations and define the term "outside salesman" in the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), which states, in part, "any employee employed . . . in the capacity of an outside salesman *(as such terms are defined and delimited from time to time by regulations of the Secretary* . . . .")) (emphasis added), *with Bellas v. CBS, Inc.*, 221 F.3d 517, 524, 532 (3d Cir. 2000) (stating that Congress contemplated the Treasury Department setting forth the definition of "retirement-type subsidy" in ERISA, but nevertheless holding that the IRS's interpretation was at odds with the statute and the legislative history) (citing ERISA, 29 U.S.C. § 1054(g)(2)(A), which states, in part, "a plan amendment which has the effect of . . . eliminating or reducing . . . a retirement-type subsidy *(as defined in regulations)* . . . .) (emphasis added).

[6] Because the Court finds, as a matter of law, that the Plan is not a church plan, the Court does not reach the merits of Defendants' factual assertions in connection with their Rule 12(b)(1) motion to dismiss or the Parties' dispute regarding whether the church plan exemption is jurisdictional. For the same reason, Plaintiff's Motion to Strike certain certifications and exhibits (ECF No. 47) is denied as moot.

III. CONCLUSION

For the reasons set forth above, and other good cause shown, it is hereby ordered that Defendants' Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) are DENIED. An Order will be entered consistent with this Opinion.

/s/Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

DATED: March 31, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed 03/31/14]

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

ORDER

This matter comes before the Court upon the motions of Defendants Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero, and Garrick Stoldt (collectively, "SPHS" or "Defendants") pursuant to Federal Rules of Civil Procedure ("Rule") 12(b)(1) and 12(b)(6). (Defs.' Br., ECF No. 42-1.) Plaintiff Laurence Kaplan ("Plaintiff" or "Mr. Kaplan") opposed Defendants' motions (Pl.'s Opp'n, ECF No. 48) and Defendants replied (Defs.' Reply, ECF No. 54). Plaintiff also filed a Motion to Strike certain certifications and exhibits attached to Defendants' Motions to Dismiss (ECF No. 47) and Defendants opposed (ECF No. 53). The Court has carefully considered the Parties' submissions and heard oral argument on March 27, 2014. For the reasons stated

in the Memorandum Opinion filed today, and other good cause shown,

IT IS on this 31st day of March, 2014, ORDERED that:

1) As a matter of law, the Saint Peter's Healthcare System Retirement Plan is not a church plan, as defined in the Employee Retirement Income Security Act, 29 U.S.C. § 1002(33).

2) Defendants' Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) are DENIED.

3) Plaintiff's Motion to Strike certain certifications and exhibits is DENIED as moot.

/s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed 09/19/14]

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

MEMORANDUM OPINION

On March 31, 2014, the Court issued an Order denying the motion to dismiss of Defendants Saint Peter's Healthcare System ("SPHS"), Ronald C. Rak, Susan Ballestero, and Garrick Stoldt (collectively, "Defendants"). (March 31 Order, ECF No. 67.) Defendants' motion to dismiss pursuant to Federal Rules of Civil Procedure ("Rule") 12(b)(1) and (b)(6) for lack of subject matter jurisdiction and failure to state a claim ultimately presented an issue of first impression in this Circuit: whether a non-profit healthcare corporation, such as SPHS, may establish and maintain a church plan, as defined in the Employee Retirement

Income Security Act ("ERISA"), 29 U.S.C. § 1002(33), if it is controlled by or associated with a church.

Presently before the Court is Defendants' motion to certify the Court's March 31 Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) and to stay the proceedings pending an appeal to the Third Circuit. (Defs.' Br., ECF No. 74-1.) Plaintiff Laurence Kaplan opposed the motion (Pl.'s Opp'n, ECF No. 85) and Defendants replied. (Defs.' Reply, ECF No. 90). The Court has carefully considered the submissions and has decided the motion without oral argument pursuant to Local Civil Rule 78.1. For the following reasons, and other good cause shown, Defendants' motion is GRANTED.

I. BACKGROUND

The Court detailed Plaintiffs factual allegations giving rise to this action in its Memorandum Opinion accompanying the Court's March 31 Order and incorporates that background herein. *(See* Mem. Op. at 2-4, ECF No. 68.)

In its Memorandum Opinion, the Court held that, as a matter of law, SPHS's Retirement Plan (the "Plan") is not a church plan exempt from ERISA, solidifying the Court's subject matter jurisdiction of Plaintiffs ERISA claims. *(Id.* at 2, 13, 17.) The Court also set forth its reasons for denying Defendants' motion to dismiss Plaintiff's ERISA's claims. After conducting a statutory analysis of ERISA's church plan definition, the Court concluded that the plain text of the statute "requires—from the outset—a [church] plan to be established by a church." (Mem. Op. at 12-13.) Because the Plan was established by SPHS, it could not be a church plan as defined under the statute. *(Id.* at 7-13.)

Defendants also moved to dismiss Plaintiffs constitutional claim alleging that the church plan exemption, as claimed by SPHS, is an unconstitutional accommodation under the Establishment Clause. However, upon concluding that SPHS's Plan is not a church plan, Defendants' motion to dismiss the constitutional claim was rendered moot and denied as such. (*Id.* at 17; *see also* March 31 Order, ¶ 2.)

II. DISCUSSION

Defendants now move to certify the Court's March 31 Order for interlocutory appeal and for a stay of proceedings, asserting that the March 31 Order satisfies the three criteria for certification. Moreover, Defendants suggest that the March 31 Order has created "chaos" for "hundreds of institutions across the country" affected by the Court's ruling. (Defs.' Br. 1-2, 16; *see also* Greenbaum Supp. Cert. Ex. A, ECF No. 75.) Unsurprisingly, Plaintiff disagrees with Defendants' assertions and contends that "[t]his case does not present 'exceptional' circumstances that warrant the disruption of the normal judicial process." (PL's Opp'n 1.)

In this instance, the Court agrees with Defendants. This is an exceptional case warranting certification for interlocutory appeal and, as explained in more detail below, Defendants have met the criteria for a certificate. In granting Defendants' motion, the Court acknowledges the practical implications of its March 31 decision, though it does not agree its ruling created nationwide "chaos."

A. Motion for Interlocutory Appeal

The Court finds that Defendants have established the three elements necessary for the Court to certify its March 31 Order for interlocutory appeal.

As a general rule, a matter may not be appealed to the Third Circuit until final judgment is entered. Nevertheless, in "exceptional cases," an interlocutory appeal may be proper. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 74 (1996). As such, a district court may exercise its discretion to grant leave to file an interlocutory appeal, under § 1292(b), if its order: (1) involves a "controlling question of law"; (2) there is "substantial ground for difference of opinion"; and (3) if appealed immediately, "may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *see also Katz v. Carte Blanche Corp.*, 496 F.2d 747, 754 (3d Cir. 1974). The burden to demonstrate that certification is appropriate lies with the moving party. *Orson, Inc. v. Miramax Film Corp.*, 867 F. Supp. 319, 320 (E.D. Pa. 1994) (citation omitted); *see also, e.g., Elec. Mobility Corp. v. Borns Sensors/Controls, Inc.*, 87 F. Supp. 2d 394, 398 (D.N.J. 2000).

First, the question of whether a non-profit healthcare corporation can establish and maintain a church plan, as defined in ERISA, is a controlling question of law. A question of law is controlling if "an incorrect disposition would constitute reversible error and . . . it is serious to the conduct of the litigation, either practically or legal[ly]." *Eisenberger v. Chesapeake Appalachia, LLC*, No. 09-cv-1415, 2010 WL 1816646, at *3 (M.D. Pa. May 5, 2010) (citing *Katz*, 496 F.2d at 755). Indeed, the Court acknowledged that "[t]he Parties' dispute is one centered on, and resolved by, the statutory construction of ERISA's church plan definition[.]" (Mem. Op. at 7.) Plaintiff concedes that "the [Court's] statutory interpretation . . . is dispositive of Plaintiff s claim that the SPHS Plan is not exempt from ERISA as a church plan[.]" (Pl.'s Opp'n 2.) Nevertheless, he disputes that the interpretive question is a controlling question of law because it

would not affect the entire litigation or its outcome. (Pl.'s Opp'n 2, 10-12, 16.) The Court disagrees.

The Court did not reach the issue of whether an exemption from ERISA eliminates the Court's subject matter jurisdiction.[1] However, if the Court's statutory interpretation was incorrect, it would require reversal upon final appeal and likely strip this Court of subject matter jurisdiction of Plaintiffs ERISA claims. *Beazer E., Inc. v. The Mead Corp.*, No. Civ.A.91-408, 2006 WL 2927627, at *2 (W.D. Pa. Oct. 12, 2006) ("The court believes that the fundamental issue of subject matter jurisdiction is one of the clearest examples of a 'controlling question of law' within the meaning of § 1292(b)."") (citation omitted); *see also Koval v. Wash. Cnty. Redevelopment Auth.*, 574 F.3d 238, 244 (3d Cir. 2009) (affirming dismissal of complaint for lack of subject matter jurisdiction because the benefits plan at issue was a "government plan" exempt from ERISA).

Second, there is substantial ground for difference of opinion whether a non-profit, tax-exempt organization can establish and maintain a church plan as defined in ERISA. Substantial ground for difference of opinion exists when there is genuine doubt or conflicting precedent as to the correct legal standard. *P. Schoenfeld Asset Mgmt. LLC. v. Cendant Corp.*, 161 F. Supp. 2d 355, 360 (D.N.J. 2001). "The clearest evidence of 'substantial grounds for difference of opinion' is where 'there are conflicting interpretations from numerous courts.'" *Knopick v. Downey*, 963 F. Supp. 2d 378, 398 (M.D. Pa. 2013) (quoting *Beazer E.*, 2006

[1] Although the Court did not reach this issue, the Court of Appeals "may address any issue fairly included within the certified order[.]" *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 205 (1996).

WL 2927627, at *2). In its Memorandum Opinion, the Court acknowledged and analyzed at length numerous federal court decisions and Internal Revenue Service and Department of Labor advisory opinions, which have—at the very least—presumed that a non-profit, tax-exempt corporation can establish and maintain a church plan. (Mem. Op. at 11-15.) More troubling, however, is that these cases conflict with each other in their analysis (or lack thereof) of the church plan definition. *(See id.* at 13.) Even if the Court did not consider its March 31 decision as one in conflict with prior decisions, a more recent split has emerged amongst courts that have taken a closer look at the plain text. *Compare Overall v. Ascension*, — F. Supp. 2d —, 2014 WL 2448492, at *15 (E.D. Mich. May 13, 2014) ("A church plan is a plan that is (1) established by a church or (2) established by an organization that is controlled by or associated with a church.")[2], *and Medina v. Catholic Health Initiatives*, No. 13-cv-01249, 2014 WL 4244012, at *2-.3 (D. Colo. Aug. 26, 2014) (rejecting report and recommendation and agreeing with *Overall), with Rollins v. Dignity Health*, — F. Supp. 2d —, 2013 WL 6512682, at *5 (N.D. Cal. Dec. 12, 2013) (concluding that "notwithstanding section C, which permits a valid church plan to be maintained by some church-affiliated organizations,

---

[2] In support of their motion, Defendants claim that this Court's "gatekeeper" reasoning has been "refuted" by *Overall*. (Defs.' Reply 14.) Although the Court agrees that *Overall* is in clear conflict with *Rollins* and this Court's decision, the *Overall* court failed to address the absence of the term "establish" in Section C(i) of the church plan definition, which was significant in *Rollins* and the Court's March 31 decision. *See* 29 U.S.C. § 1002(33)(C)(i); Mem. Op. at 9-10; *Rollins*, 2013 WL 6512682, at *5.

section A still requires that a church *establish* a church plan") (emphasis in original).[3]

Third, a definitive, appellate ruling would materially advance the termination of the litigation. A § 1292(b) certification "materially advances the ultimate termination of the litigation where the interlocutory appeal eliminates: (1) the need for trial; (2) complex issues that would complicate trial; or (3) issues that would make discovery more costly or burdensome." *Bais Yaakov of Spring Valley v. Peterson's Nelnet, LLC*, No. 11-00011, 2013 WL 663301, at *4 (D.N.J. Feb.21, 2013). "Certification is more likely to materially advance the litigation where the appeal occurs early in the litigation, before extensive discovery has taken place and a trial date has been set." *N.J. Prot. & Advocacy, Inc. v. N.J. Dep't of Educ.*, No. 07-2978, 2008 WL 4692345, at *3 (D.N.J. Oct. 8, 2008).

Plaintiff disputes that Defendants have met any of the criteria necessary for certification, but his major point of contention is that certification would not materially advance the ultimate termination of the litigation. (Pl.'s Opp'n 2, 7.) Specifically, Plaintiff asserts that a reversal would not prevent unnecessary expense and would broaden discovery by adding

---

[3] *See also Chavies v. Catholic Health East*, No. 13-1645 (CDJ) (E.D. Pa. Mar. 28, 2014) (order denying hospital's motion to dismiss without prejudice and ordering jurisdictional discovery on the issue of whether defendant-hospital is itself a church pursuant to 29 U.S.C. § 1002(33)(A), after the hospital argued that it is a church). Because the *Chavies* court has not issued a decision regarding the construction of the church plan definition, the Court does not view that order as one in agreement with or against this Court's decision. However, any determination made by the Third Circuit will also bind the *Chavies* court.

factual and legal issues. *(Id.* at 12-15.) To support his assertion, Plaintiff represents that this case could be submitted to the Court within five months after targeted discovery. *(Id.* at 5.) Defendants assert that discovery will take "two mutually exclusive pathways" and an interlocutory appeal will determine the appropriate path. (Defs.' Reply 7.) According to Defendants, if the case goes forward in the normal course, then discovery will focus on issues of class certification and the ERISA claims but not on issues of control or association with the Roman Catholic Church. On the other hand, if the March 31 Order is reversed, then there may be additional jurisdictional discovery. *(Id.* at 7.)

As discussed above, Defendants' motion concerns a controlling question of law. To that end, "[t]he requirement that an appeal may materially advance the ultimate termination of the litigation is closely tied to the requirement that the order involve a controlling question of law." *Pub. Interest Research Grp. of N.J., Inc. v. Hercules, Inc.*, 830 F. Supp. 1549, 1557 (D.N.J. 1993) (citation and internal quotations omitted). An interlocutory appeal would avoid unnecessary expense and will materially advance the ultimate termination of the litigation: at most, a reversal of the Court's decision will likely eliminate the Court's subject matter jurisdiction of Plaintiff's ERISA claims altogether and, at the very least, will eliminate the necessity for certain avenues of discovery in the manner Defendants have described. Furthermore, this case is still in the early stages of litigation, where the parties have not participated in a Rule 16 conference or engaged in any discovery. Finally, if the Court is reversed, deciding the Establishment Clause issue would not require discovery because it is a pure question of law.

Plaintiff relies on the *Rollins* court's denial of Dignity Health's motion for interlocutory appeal. *See Rollins v. Dignity Health*, No. 13-cv-01450-TEH, 2014 WL 1048637 (N.D. Cal. Mar. 17, 2014). Judge Henderson's decision is distinguishable from the instant matter because of its procedural posture. The *Rollins* court's initial decision regarding the church plan definition was decided on a motion to dismiss for failure to state a claim, not for lack of subject matter jurisdiction. Indeed, Judge Henderson made this distinction in his explanation for denying Dignity Health's motion for interlocutory appeal. *Id.* at *2 ("a different ruling as to whether a court has jurisdiction . . . could invalidate an entire district court proceeding. In contrast, the matter at issue here is not of such high stakes"). Judge Henderson's decision, therefore, is not persuasive on this issue.

In sum, this is the rare case where an interlocutory appeal is appropriate. Ultimately, of course, that is not the Court's decision to make, as the Third Circuit may disagree and deny certification. Defendants, nevertheless, should at least have the opportunity to make their request to the Court of Appeals, and by certifying, the Court grants them leave to do so.

B. Motion to Stay

Defendants move to stay the proceedings pending a determination by the Third Circuit and Plaintiff opposes. (Defs.' Br. 18-19; Pl.'s Opp'n 2, 25-27.) Each court has the inherent power to control its own docket to promote fair and efficient adjudication. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Rolo v. Gen. Dev. Corp.*, 949 F.2d 695, 702 (3d Cir. 1991). To promote fair and efficient adjudication in this case, the Court will stay this action pending appeal from the March 31 Order. To be clear, however, a stay is granted only

until the Third Circuit decides whether it will permit an appeal to be taken.[4]

III. Conclusion

For the reasons set forth above, and other good cause shown, it is hereby ordered that Defendants' motion to certify the Court's March 31 Order for interlocutory appeal and to stay proceedings pending appeal is GRANTED. An Order will be entered consistent with this Opinion.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

DATED: September 19, 2014

[4] As provided in Federal Rule of Appellate Procedure 8 and local Appellate Rule 8.0, Defendants may file to stay on appeal.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[Filed 09/19/14]

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

ORDER

This matter comes before the Court upon Defendants' motion to certify the Court's March 31, 2014 Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) and to stay the proceedings pending an appeal to the Third Circuit. (Defs.' Mot., ECF No. 74.) Plaintiff opposed the motion (Pl.'s Opp'n, ECF No. 85) and Defendants replied. (Defs.' Reply, ECF No. 90). The Court has carefully considered the submissions and has decided the motion without oral argument pursuant to Local Civil Rule 78.1. Based on the foregoing and the Court's accompanying Memorandum Opinion filed today, and other good cause shown,

IT IS on this 19th day of September, 2014, ORDERED that:

1) Defendants' motion to certify the Court's March 31, 2014 Order for interlocutory appeal to the Third Circuit Court of Appeals (ECF No. 74) is GRANTED.

   a) The following question presented in the March 31 Order and accompanying Memorandum Opinion (ECF Nos. 67-68) is hereby certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b): Whether an organization, a civil law corporation or otherwise, can both establish and maintain a "church plan," as defined in the Employee Retirement Income Security Act, 29 U.S.C. § 1002(33), if such organization is controlled by or associated with a church or a convention or association of churches.

   b) Defendants shall file its petition to the Third Circuit pursuant to 28 U.S.C. § 1292(b) within ten (10) days from the date of this order.

2) Defendants' motion to stay proceedings is GRANTED pending a decision by the Third Circuit Court of Appeals regarding Defendants' petition for an interlocutory appeal.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX E

1. The First Amendment to the United States Constitution provides in relevant part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

2. 29 U.S.C. §1002(33) provides:

(33)(A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.

(B) The term "church plan" does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of title 26), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(C) For purposes of this paragraph—

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose

or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of title 26 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of title 26 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(v) If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization, whether a civil law corporation or otherwise, which is exempt from tax under section

501 of title 26 and which is controlled by or associated with a church or a convention or association of churches, the church plan shall not fail to meet the requirements of this paragraph merely because the plan—

(I) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(II) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7) of title 26) at the time of such separation from service.

(D)(i) If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26 fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years.

(ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(iii) For purposes of this subparagraph, the term "correction period" means—

(I) the period ending 270 days after the date of mailing by the Secretary of the Treasury of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or

(II) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary of the Treasury on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(III) any additional period which the Secretary of the Treasury determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

3. 26 U.S.C. § 414(e) provides:

(e) Church plan

(1) In general

For purposes of this part, the term "church plan" means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) Certain plans excluded

The term "church plan" does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of

churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) Definitions and other provisions

For purposes of this subsection—

(A) Treatment as church plan

A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) Employee defined

The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) Church treated as employer

A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) Association with church

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) Special rule in case of separation from plan

If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section

72(m)(7)) at the time of such separation from service.

(4) Correction of failure to meet church plan requirements

(A) In general

If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) Failure to correct

If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) Correction period defined

The term "correction period" means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of

all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

APPENDIX F

DOL Advisory Opinions				
	Date	Citation	Description of Entity That Established Plan	Name of Entity That Established Plan
1.	01/09/ 1985	1985-01A 1985 WL 32792	Healthcare System	Various hospitals in Ohio
2.	03/26/ 1985	1985-14A 1985 WL 32805	Healthcare System	Holy Cross Hospital
3.	09/06/ 1985	1985-32A 1985 WL 32822	Healthcare System	Hospital de la Concepcion
4.	10/21/ 1985	1985-35A 1985 WL 32825	Healthcare System	Holy Redeemer Hospital
5.	06/10/ 1986	1986-18A 1986 WL 38855	Healthcare System	St. Francis Hospital
6.	08/22/ 1986	1986-19A 1986 WL 38856	Healthcare System	St. Agnes Medical Center
7.	12/04/ 1986	1986-25A 1986 WL 38864	Healthcare System	Catholic Health Corporation
8.	05/10/ 1990	1990-12A 1990 WL 123941	Healthcare System	Uihlein Mercy Center, Inc.
9.	05/10/ 1990	1990-13A 1990 WL 123940	Educational Institution	Gwynedd Mercy College
10.	02/26/ 1991	1991-11A 1991 WL 34145	Healthcare System	St. Francis Medical Center, Inc.
11.	02/26/ 1991	1991-12A 1991 WL 34146	Healthcare System	Caledonia Health Care Center, Inc.

12.	02/26/ 1991	1991-10A 1991 WL 34144	Healthcare System	St. Mary's Hospital, Inc.
13.	02/26/ 1991	1991-13A 1991 WL 34147	Healthcare System	St. Joseph's Hospital of Arcadia, Inc.
14.	03/06/ 1991	1991-14A 1991 WL 34148	Healthcare System	Eastern Mercy Health System
15.	07/03/ 1991	1991-22A 1991 WL 122400	Healthcare System	Mercy Health Services of the South, Inc.
16.	07/03/ 1991	1991-23A 1991 WL 313851	Religious Organization	Sisters of Providence, Sacred Heart Province
17.	08/16/ 1991	1991-30A 1991 WL 169347	Healthcare System	Sisters of Charity of Nazareth Health Corporation
18.	11/12/ 1991	1991-43A 1991 WL 255572	Healthcare System	CSJ Health System of Wichita, Inc.
19.	11/12/ 1991	1991-41A 1991 WL 255570	Healthcare System	St. Mary's Hospital, Inc.
20.	12/10/ 1991	1991-45A 1991 WL 268506	International mission work	Baptist Mid-Missions
21.	12/20/ 1991	1991-46A 1991 WL 292567	Healthcare System	St. Joseph Health System
22.	03/24/ 1992	1992-09A 1992 WL 67322	Healthcare System	Franciscan Healthcare Corporation of Colorado Springs (FHCCS)
23.	01/06/ 1993	1993-01A 1993 WL 68524	Healthcare System	Mercy Hospital, Inc.

24.	01/12/1993	1993-03A 1993 WL 68526	Healthcare System	Sacred Heart Medical Center, Inc.
25.	03/09/1993	1993-08A 1993 WL 97264	Healthcare System; Elder Care Services	Baptist Convention of the State of Georgia: Georgia Baptist Health Care System
26.	03/09/1993	1993-07A 1993 WL 97263	Healthcare System	Pittsburgh Mercy Health System, Inc. (PMHS)
27.	02/17/1994	1994-04A 1994 WL 58680	Healthcare System	Franciscan Health System
28.	03/08/1994	1994-05A 1994 WL 83200	Healthcare System	Eastern Mercy Health System
29.	03/08/1994	1994-06A 1994 WL 84834	Nursing Home	Sacred Heart Manor
30.	03/17/1994	1994-10A 1994 WL 86985	Elder Care Services	Messiah Home
31.	03/17/1994	1994-08A 1994 WL 86983	Healthcare System	The Nazareth Hospital
32.	03/17/1994	1994-09A 1994 WL 86984	Healthcare System	St. Peter's Hospital
33.	03/23/1994	1994-11A 1994 WL 110683	Healthcare System	Lancaster Mennonite Hospitals
34.	04/04/1994	1994-12A 1994 WL 110685	Elderly Housing and Related Elder Care Services	Morningside Ministries
35.	04/04/1994	1994-13A 1994 WL 112546	Social Services and social service programs	Lutheran Social Services—East Region

36.	04/20/ 1994	1994-16A 1994 WL 145784	Healthcare System	St. Anthony's Hospital
37.	04/20/ 1994	1994-15A 1994 WL 143957	Healthcare System (health care and living services)	Presbyterian Homes of the Presbytery of Huntingdon
38.	05/23/ 1994	1994-18A 1994 WL 209777	Educational Institution	Theological Seminary of the Presbyterian Church (U.S.A.) a/k/a Princeton Theological Seminary
39.	11/03/ 1994	1994-34A 1994 WL 608800	Educational Institution	St. Francis College of Fort Wayne, Inc.
40.	11/10/ 1994	1994-36A 1994 WL 642271	Healthcare System	St. Anne's Maternity Home
41.	03/06/ 1995	1995-02A 1995 WL 93291	Healthcare System	Jeanes Hospital
42.	06/16/ 1995	1995-10A 1995 WL 486696	Educational Institution	St. Joseph's University
43.	06/16/ 1995	1995-07A 1995 WL 369555	Healthcare System	Providence Services
44.	06/16/ 1995	1995-08A 1995 WL 369556	Healthcare System; Group purchasing and computer services	Sisters of St. Francis Health Services; Alverno Administrative Services, Inc.
45.	06/16/ 1995	1995-09A 1995 WL 369557	Educational Institution	Archmere Academy, Inc.

46.	06/19/ 1995	1995-13A 1995 WL 369560	Healthcare System	Mercy Life Center Corporation
47.	06/19/ 1995	1995-12A 1995 WL 369559	Residential and Educational Services	House of the Good Shepherd; Good Shepherd Corporation
48.	12/7/ 1995	1995-30A 1995 WL 740297	Educational Institution (Social Ministries)	Allegheny Lutheran Social Ministries, Inc.
49.	07/10/ 1996	1996-10A 1996 WL 386099	Healthcare System (Homecare Services)	Lutheran Home Care Services, Inc.
50.	07/12/ 1996	1996-11A 1996 WL 423471	Healthcare System	Mercy Psychiatric Institute
51.	07/26/ 1996	1996-13A 1996 WL 423473	Educational Institution	La Salle College High School
52.	09/18/ 1996	1996-17A 1996 WL 531542	Healthcare System	Mercy Providence Hospital
53.	09/25/ 1996	1996-18A 1996 WL 556108	Healthcare System	Brook Lane Psychiatric Center, Inc.
54.	09/30/ 1996	1996-19A 1996 WL 556109	Healthcare System	Sisters of Charity of the Incarnate Word
55.	10/31/ 1996	1996-24A 1996 WL 634363	Educational Institution	Moorestown Friends School Association
56.	01/6/ 1997	1997-01A 1997 WL 5391	Healthcare System	ServantCor
57.	02/7/ 1997	1997-04A 1997 WL 75229	Healthcare System	St. Margaret Mercy Healthcare Centers, Inc

58.	02/27/ 1997	1997-07A 1997 WL 94859	Healthcare System	Mercy Hospital of Watertown
59.	03/21/ 1997	1997-09A 1997 WL 139560	Social Services	Tressler Lutheran Services
60.	04/07/ 1997	1997-10A 1997 WL 167654	Retirement Community	Homewood Retirement Centers of the United Church of Christ, Inc.
61.	04/24/ 1997	1997-13A 1997 WL 200790	Educational Institution	Saint Dominic Academy
62.	09/15/ 1997	1997-22A 1997 WL 576596	Retirement Community	Albright Care Services
63.	06/19/ 1998	1998-05A 1998 WL 441032	Retirement Community	Foulkeways at Gwynedd
64.	02/28/ 2000	2000-02A 2000 WL 233746	Educational Institution	Laroche College
65.	05/17/ 2000	2000-05A 2000 WL 744359	Healthcare System	Mercy Health System of Western New York
66	12/22/ 2000	2000 WL 33146430	Religious Organization	American Jewish Joint Distribution Committee, Inc.
67.	12/30/ 2004	2004-11A 2004 WL 3244870	Healthcare System	Mercy Health System; Mercy Life Center Corporation

IRS Private Letter Rulings			
No.	**Date**	**Citation**	**Description of Entity that Established Plan**
1.	January 13, 1983	PLR 8315054, 1983 WL 198031	Hospitals and home for elderly
2.	March 25, 1983	PLR 8325131, 1983 WL 198887	Hospitals
3.	April 1, 1983	PLR 8326165, 1983 WL 204621	Hospital
4.	February 3, 1983	PLR 8318082, 1983 WL 198497	Mission and outreach services
5.	January 31, 1984	PLR 8417119, 1984 WL 266643	Nursing home
6.	July 31, 1984	PLR 8444065, 1984 WL 268070	Hospitals and a college
7.	July 31, 1984	PLR 8444068, 1984 WL 268073	Health care-related institutions and educational institutions
8.	July 12, 1984	PLR 8441055, 1984 WL 268690	Nursing home
9.	September 18, 1984	PLR 8451046, 1984 WL 268902	Hospital
10.	January 18, 1985	PLR 8515110, 1985 WL 292630	Health care
11.	February 7, 1985	PLR 8518079, 1985 WL 292037	Administration center
12.	April 30, 1985	PLR 8530080, 1985 WL	Hospitals

		294246	
13.	April 30, 1985	PLR 8530081, 1985 WL 294247	Hospital
14.	May 16, 1985	PLR 8532070, 1985 WL 293379	Hospital
15.	May 16, 1985	PLR 8532074, 1985 WL 293383	Hospital
16.	June 28, 1985	PLR 8538103, 1985 WL 294458	Educational academies
17.	November 12, 1985	PLR 8606038, 1985 WL 295882	Non-profit corporation that operates educational institutions, hospitals, nursing homes and home health care agencies
18.	December 26, 1985	PLR 8612068, 1985 WL 297663	Hospital
19.	March 26, 1986	PLR 8625073, 1986 WL 369365	Hospital
20.	March 28, 1986	PLR 8625082, 1986 WL 369374	Home health care organization
21.	August 14, 1986	PLR 8645052, 1986 WL 371859	Non-profit corporation that owns educational institutions, hospitals, nursing homes and home health care agencies
22.	May 26, 1987	PLR 8734033, 1987 WL	Health care system

		421325	
23.	September 18, 1987	PLR 8750079, 1987 WL 428748	Hospitals
24.	February 29, 1988/ May 20, 1988	PLR 8820098, 1988 WL 571365	Nonprofit corporation that operates nursing home and residential retirement facilities
25.	March 22, 1988/ June 17, 1988	PLR 8824051, 1988 WL 571733	Health care system
26.	March 22, 1988/ June 17, 1988	PLR 8824049, 1988 WL571731	Health care system
27.	March 22, 1988/ June 17, 1988	PLR 8824050, 1988 WL 571732	Health care system
28.	March 31, 1988/ June 24, 1988	PLR 8825131, 1988 WL 571879	Health care system
29.	April 15, 1988/ July 8, 1988	PLR 8827071, 1988 WL 572030	Health care system
30.	April 15, 1988/ July 8, 1988	PLR 8827070, 1988 WL 572029	Health care system
31.	April 18, 1988/ July 8, 1988	PLR 8827073, 1988 WL 572032	Health care system
32.	April 22, 1988/ July 15, 1988	PLR 8828095, 1988 WL 572127	Health care and educational organizations
33.	April 22, 1988/ July 15, 1988	PLR 8828096, 1988 WL 572128	Health care and educational organizations
34.	April 22, 1988/ July 15, 1988	PLR 8828088, 1988 WL 572120	Health care and educational organizations

35.	April 22, 1988/ July 15, 1988	PLR 8828090, 1988 WL 572122	Health care and educational organizations
36.	April 22, 1988/ July 15, 1988	PLR 8828091, 1988 WL 572123	Health care and educational organizations
37.	April 22, 1988/ July 15, 1988	PLR 8828092, 1988 WL 572124	Health care and educational organizations
38.	April 22, 1988/ July 15, 1988	PLR 8828093, 1988 WL 572125	Health care and educational organizations
39.	April 22, 1988/ July 15, 1988	PLR 8828094, 1988 WL 572126	Health care and educational organizations
40.	April 22, 1988/ July 15, 1988	PLR 8828097, 1988 WL 572129	Health care and educational organizations
41.	April 22, 1988/ July 15, 1988	PLR 8828087, 1988 WL 572119	Health care and educational organizations
42.	April 22, 1988/ July 15, 1988	PLR 8828089, 1988 WL 572121	Health care and educational organizations
43.	April 29, 1988	PLR 8829080, 1988 WL 572210	Hospitals
44.	April 29, 1988	PLR 8829081, 1988 WL 572211	Hospitals
45.	April 29, 1988	PLR 8829079, 1988 WL 572209	Hospitals
46.	April 29, 1988	PLR 8829082, 1988 WL 572212	Hospitals
47.	April 29, 1988	PLR 8829083, 1988 WL 572213	Hospitals
48.	April 29, 1988	PLR 8829084, 1988 WL 572214	Hospitals

49.	April 29, 1988	PLR 8829085, 1988 WL 572215	Hospitals
50.	April 29, 1988	PLR 8829086, 1988 WL 572216	Hospitals
51.	April 29, 1988/ February 4, 1988	PLR 8817084, 1988 WL 571124	Health care entity
52.	May 3, 1988/ July 29, 1988	PLR 8830046, 1988 WL 572265	Nationwide network of health care institutions
53.	May 13, 1988	PLR 8819061, 1988 WL 571246	Hospitals
54.	May 27, 1988/ August 19, 1988	PLR 8833050, 1988 WL 572446	Hospitals
55.	May 27, 1988/ August 19 1988	PLR 8833048, 1988 WL 572444	Hospitals
56.	May 27, 1988/ August 19, 1988	PLR 8833049, 1988 WL 572445	Hospitals
57.	June 13, 1988/ September 2, 1988	PLR 8835061, 1988 WL 572602	Educational and health services
58.	June 17, 1988/ September 9, 1988	PLR 8836068, 1988 WL 572671	Hospitals
59.	June 17, 1988/ September 9, 1988	PLR 8836069, 1988 WL 572672	Hospitals
60.	June 30, 1988/ September 23, 1988	PLR 8838071, 1988 WL 572837	Nonprofit corporation that operates school and hospitals
61.	June 30, 1988/ September 23, 1988	PLR 8838073, 1988 WL 572839	Nonprofit corporation that operates school and hospitals

62.	June 30, 1988/ September 23, 1988	PLR 8838072, 1988 WL 572838	Nonprofit corporation that operates school and hospitals
63.	August 15, 1988/ November 4, 1988	PLR 8844071, 1988 WL 573262	Nationwide network of health care institutions
64.	August 18, 1988/ November 10, 1988	PLR 8845055, 1988 WL 573317	Nationwide network of health care institutions
65.	August 30, 1988/ November 25, 1988	PLR 8847074, 1988 WL 573666	Nationwide network of health care institutions
66.	August 31, 1988/ November 25, 1988	PLR 8847080, 1988 WL 573672	Hospital
67.	September 15, 1988/ December 9, 1988	PLR 8849071, 1988 WL 573827	Nonprofit corporation that operates health care, educational, charitable and
68.	September 16, 1988/ December 9, 1988	PLR 8849076, 1988 WL 573832	Nationwide network of health care institutions
69.	September 16, 1988/ December 9, 1988	PLR 8849077, 1988 WL 573833	Nationwide network of health care institutions
70.	September 16, 1988/ December 9, 1988	PLR 8849078, 1988 WL 573834	Nationwide network of health care institutions
71.	September 28, 1988 December 23, 1988	PLR 8851066, 1988 WL 573528	Hospital
72.	September 28, 1988/ December 23, 1988	PLR 8851070, 1988 WL 573532	Hospital
73.	September 28, 1988/ December 23, 1988	PLR 8851065, 1988 WL 573527	Hospital
74.	September 28, 1988/ December 23, 1988	PLR 8851064, 1988 WL 573526	Hospital

75.	September 28, 1988/ December 23, 1988	PLR 8851073, 1988 WL 573535	Hospital
76.	September 28, 1988/ December 23, 1988	PLR 8851068, 1988 WL 573530	Hospital
77.	September 28, 1988/ December 23, 1988	PLR 8851069, 1988 WL 573531	Hospitals
78.	September 28, 1988/ December 23, 1988	PLR 8851067, 1988 WL 573529	Hospital
79.	September 28, 1988/ December 23, 1988	PLR 8851071, 1988 WL 573533	Nationwide network of health care institutions
80.	September 28, 1988/ December 23, 1988	PLR 8851075, 1988 WL 573537	Nationwide network of health care institutions
81.	October 14, 1988/ January 6, 1989	PLR 8901060, 1989 WL 593342	Nationwide network of health care institutions
82.	October 14, 1988/ January 6, 1989	PLR 8901057, 1989 WL 593339	Nationwide network of health care institutions
83.	October 14, 1988/ January 6, 1989	PLR 8901062, 1989 WL 593344	Nationwide network of health care institutions
84.	October 14, 1988/ January 6, 1989	PLR 8901061, 1989 WL 593343	Nationwide network of health care institutions
85.	October 21, 1988/ January 13, 1989	PLR 8902044, 1989 WL 593392	Nationwide network of health care institutions
86.	October 21, 1988/ January 13, 1989	PLR 8902046, 1989 WL 593394	Nationwide network of health care institutions
87.	October 31, 1988/ January 23, 1989	PLR 8903093, 1989 WL 593495	Health care system
88.	October 31, 1988/ January 23 1989	PLR 8903094, 1989 WL 593496	Health care system

89.	October 31, 1988/ January 23, 1989	PLR 8903095, 1989 WL 593497	Health care system
90.	October 31, 1988/ January 23, 1989	PLR 8903096, 1989 WL 593498	Health care system
91.	October 31, 1988 / January 23, 1989	PLR 8903097, 1989 WL 593499	Health care system
92.	October 31, 1988/ January 23, 1989	PLR 8903103, 1989 WL 593505	Health care system
93.	October 31, 1988/ January 23, 1989	PLR 8903104, 1989 WL 593506	Health care system
94.	October 31, 1988/ January 23, 1989	PLR 8903105, 1989 WL 593507	Health care system
95.	October 31, 1988/ January 23, 1989	PLR 8903098, 1989 WL 593500	Health care system
96.	October 31, 1988/ January 23, 1989	PLR 8903099, 1989 WL 593501	Health care system
97.	October 31, 1988/ January 23, 1989	PLR 8903100, 1989 WL 593502	Health care system
98.	October 31, 1988/ January 23, 1989	PLR 8903102, 1989 WL 593504	Health care system
99.	November 8, 1988/ February 3, 1989	PLR 8905042, 1989 WL 593617	Hospital
100.	November 25, 1988/ February 17, 1989	PLR 8907058, 1989 WL 594442	Health care services
101.	December 9, 1988/ March 3, 1989	PLR 8909062, 1989 WL 594592	Hospital
102.	December 23, 1988	PLR 8851072, 1988 WL 573534	Hospital

103.	December 23, 1988	PLR 8851074, 1988 WL 573536	Hospital
104.	January 6, 1989	PLR 8901058, 1989 WL 593340	Nationwide network of health care institutions
105.	January 23, 1989	PLR 8903101, 1989 WL 593503	Health care system
106.	January 25, 1989/ April 28, 1989	PLR 8917012, 1989 WL 595133	Educational institution
107.	February 17, 1989/ May 12, 1989	PLR 8919066, 1989 WL 595370	Nonprofit corporation that provides health, shelter and spiritual development services
108.	March 17, 1989	PLR 8911074, 1989 WL 594756	Health care system
109.	May 12, 1989/ August 4, 1989	PLR 8931071, 1989 WL 594280	Health care services
110.	May 19, 1989/ August 11, 1989	PLR 8932087, 1989 WL 594381	Health care services
111.	May 19, 1989/ August 11, 1989	PLR 8932088, 1989 WL 594382	Health care services
112.	May 19, 1989/ August 11, 1989	PLR 8932089, 1989 WL 594383	Educational organization
113.	May 23, 1989/ August 18, 1989	PLR 8933032, 1989 WL 595904	Health care services
114.	May 23, 1989/ August 18, 1989	PLR 8933034, 1989 WL 595906	Health care system

115.	May 23, 1989/ August 18 1989	PLR 8933042, 1989 WL 595914	Health care system
116.	May 23, 1989/ August 18, 1989	PLR 8933043, 1989 WL 595915	Health care system
117.	May 23, 1989/ August 18, 1989	PLR 8933044, 1989 WL 595916	Health care system
118.	May 24, 1989/ August 18, 1989	PLR 8933051, 1989 WL 595923	Health care system
119.	May 24, 1989/ August 18, 1989	PLR 8933052, 1989 WL 595924	Health care system
120.	May 25, 1989/ August 18, 1989	PLR 8933055, 1989 WL 595927	Health care system
121.	May 25, 1989/ August 18, 1989	PLR 8933054, 1989 WL 595926	Health care system
122.	May 26, 1989/ August 18, 1989	PLR 8933060, 1989 WL 595932	Health care system
123.	June 8, 1989/ September 1, 1989	PLR 8935052, 1989 WL 596061	Educational institutions
124.	June 8, 1989/ August 25, 1989	PLR 8934078, 1989 WL 596009	Educational institutions
125.	June 13, 1989/ September 8, 1989	PLR 8936052, 1989 WL 596128	Health care system
126.	June 30, 1989/ September 22, 1989	PLR 8938078, 1989 WL 596304	Health care system
127.	July 11, 1989/ October 6, 1989	PLR 8940048, 1989 WL 596417	Health care system
128.	July 18, 1989/ October 13, 1989	PLR 8941045, 1989 WL	Health care system

		596499	
129.	July 19, 1989/ October 13, 1989	PLR 8941060, 1989 WL 596514	Health care system
130.	July 21, 1989/ October 13, 1989	PLR 8941081, 1989 WL 596535	Health care system
131.	July 21, 1989/ October 20, 1989	PLR 8942103, 1989 WL 596643	Entity providing services for the elderly
132.	July 26, 1989/ October 20, 1989	PLR 8942071, 1989 WL 596611	Health care system
133.	July 28, 1989/ October 20, 1989	PLR 8942100, 1989 WL 596640	Health care system
134.	August 9, 1989/ November 3, 1989	PLR 8944048, 1989 WL 596777	Health care system
135.	August 10, 1989/ November 3, 1989	PLR 8944053, 1989 WL 596782	Health care system
136.	August 11, 1989/ November 3, 1989	PLR 8944070, 1989 WL 596799	Health care system
137.	August 11, 1989/ November 3, 1989	PLR 8944073, 1989 WL 596802	Health care system
138.	August 22, 1989/ November 17, 1989	PLR 8946050, 1989 WL 596927	Health care system
139.	September 1, 1989/ November 24, 1989	PLR 8947066, 1989 WL 597028	Health care system
140.	September 12, 1989/ December 8, 1989	PLR 8949051, 1989 WL 597138	Health care system
141.	October 6, 1989/ December 29, 1989	PLR 8952077, 1989 WL 597430	Educational institutions

142.	October 13, 1989	PLR 8941086, 1989 WL 596540	Health care system
143.	October 20, 1989	PLR 8942043, 1989 WL 596583	Health care system
144.	November 3, 1989	PLR 8944036, 1989 WL 596765	Health care system
145.	November 3, 1989	PLR 8944071, 1989 WL 596800	Health care system
146.	December 21, 1989/ March 16, 1990	PLR 9011048, 1990 WL 698793	Health care system
147	February 15, 1990/ May 11, 1990	PLR 9019067, 1990 WL 699387	Hospital
148.	February 15, 1990/ May 11, 1990	PLR 9019069, 1990 WL 699389	Hospitals and health care facilities
149.	February 15, 1990/ May 11, 1990	PLR 9019066, 1990 WL 699386	Hospital
150.	March 16, 1990	PLR 9011006, 1990 WL 698751	Health care system
151.	March 19, 1990/ June 15, 1990	PLR 9024051, 1990 WL 699718	Nonprofit corporation that operates colleges and
152.	March 20, 1990/ June 15, 1990	PLR 9024060, 1990 WL 699727	Health and educational organizations
153.	March 20, 1990/ June 15, 1990	PLR 9024057, 1990 WL 699724	Educational institutions, hospitals and community health services agency
154.	March 20, 1990/ June 15, 1990	PLR 9024063, 1990 WL	Educational institutions,

		699730	hospitals and community health services agency
155.	March 29, 1990/ June 22. 1990	PLR 9025091, 1990 WL 699845	Hospital
156.	April 23, 1990/ July 20, 1990	PLR 9029039, 1990 WL 708163	Hospitals, long-term care facilities, retirement
157.	April 23, 1990/ July 20, 1990	PLR 9029038, 1990 WL 708162	Hospitals
158.	April 24, 1990/ July 20, 1990	PLR 9029048, 1990 WL 708165	Hospitals and home for aged
159.	April 24, 1990/ July 20, 1990	PLR 9029045, 1990 WL 708164	Hospitals
160.	April 27, 1990/ July 20, 1990	PLR 9029065, 1990 WL 708166	Educational organizations
161.	May 1, 1990/ July 27, 1990	PLR 9030047, 1990 WL 708229	Health care system
162.	May 4, 1990/ July 27, 1990	PLR 9030065, 1990 WL 708230	Hospitals
163.	May 8, 1990/ August 3, 1990	PLR 9031029, 1990 WL 699990	Health care system
164.	May 8, 1990/ August 3, 1990	PLR 9031038, 1990 WL 699999	Health care facilities
165.	May 14, 1990/ August 10, 1990	PLR 9032022, 1990 WL 700035	Educational and health care facilities
166.	May 14, 1990/ August 10, 1990	PLR 9032024, 1990 WL 700037	Health care facilities
167.	May 14, 1990/	PLR 9032019,	Hospital

	August 10, 1990	1990 WL 700032	
168.	May 29, 1990/ August 24, 1990	PLR 9034047, 1990 WL 700178	Charitable day care center
169.	June 12, 1990/ September 7, 1990	PLR 9036026, 1990 WL 700320	Hospital commission
170.	June 5, 1990/ August 31, 1990	PLR 9035053, 1990 WL 700266	Health care and social services
171.	June 5, 1990/ August 31, 1990	PLR 9035054, 1990 WL 700267	Hospital
172.	June 7, 1990/ August 31, 1990	PLR 9035077, 1990 WL 700290	Hospital
173.	June 8, 1990/ August 31, 1990	PLR 9035080, 1990 WL 700293	Retirement and health care services for aging
174.	June 19, 1990/ September 21, 1990	PLR 9038059, 1990 WL 700467	Retirement homes
175.	June 25, 1990/ October 12, 1990	PLR 9041004, 1990 WL 700585	Hospital
176.	June 29, 1990/ September 21, 1990	PLR 9038060, 1990 WL 700468	Retirement and nursing centers
177.	June 29, 1990/ September 21, 1990	PLR 9038058, 1990 WL 700466	Hospital
178.	July 2, 1990/ September 28, 1990	PLR 9039037, 1990 WL 700506	Hospital
179.	July 6, 1990	PLR 9027052, 1990 WL 699961	Hospitals
180.	July 6, 1990	PLR 9027048, 1990 WL 699957	Hospitals, nursing school, medical school

181.	July 11, 1990/ October 5, 1990	PLR 9040057, 1990 WL 700568	Hospital
182.	July 11, 1990/ October 12, 1990	PLR 9040056, 1990 WL 700567	Operation of nursing homes
183.	August 1, 1990/ October 26, 1990	PLR 9043057, 1990 WL 700786	Hospitals
184.	September 24, 1990/ December 21, 1990 /	PLR 9051016, 1990 WL 701282	Health care and educational organizations
185.	September 28, 1990/ December 21, 1990	PLR 9051047, 1990 WL 701313	Hospitals
186.	October 16, 1990/ January 11, 1991	PLR 9102032, 1991 WL 777289	Hospital
187.	November 21, 1990/ February 15, 1991	PLR 9107035, 1991 WL 777527	Schools
188.	November 21, 1990/ February 15, 1991	PLR 9107034, 1991 WL 777526	Hospital
189.	November 28, 1990/ February 22, 1991	PLR 9108051, 1991 WL 777580	Hospitals
190.	January 8, 1991/ April 5, 1991	PLR 9114026, 1991 WL 777892	Hospitals
191.	January 30, 1991/ April 26, 1991	PLR 91 17060, 1991 WL 778497	Hospitals and nursing homes
192.	January 30, 1991/ April 26, 1991	PLR 91 17059, 1991 WL 778496	Hospitals and nursing homes
193.	March 1, 1991/ May 24, 1991	PLR 9121066, 1991 WL 778716	Educational institution
194.	March 7, 1991/ May 31, 1991	PLR 9122078, 1991 WL 778797	Hospitals

195.	March 13, 1991/ June 7, 1991	PLR 9123045, 1991 WL 778846	Hospital
196.	March 18, 1991/ June 14 1991	PLR 9124027, 1991 WL 778895	Health care organization
197.	May 2, 1991/ July 26, 1991	PLR 9130043, 1991 WL 779262	Health care system
198.	May 29, 1991/ August 23, 1991	PLR 9134021, 1991 WL 779455	Hospital
199.	June 14, 1991/ September 6, 1991	PLR 9136036, 1991 WL 778021	Hospitals, health care and related services
200.	June 15, 1991/ August 30, 1991	PLR 9135052, 1991 WL 777977	Health care system
201.	July 11, 1991/ October 4, 1991	PLR 9140071, 1991 WL 778245	Publishing house
202.	August 9, 1991/ November 1, 1991	PLR 9144039, 1991 WL 779590	Entity providing services to the elderly
203.	October 4, 1991/ December 27, 1991	PLR 9152048, 1991 WL 780007	Hospital
204.	October 29, 1991/ January 24, 1992	PLR 9204034, 1992 WL 800923	Hospital
205.	December 20, 1991	PLR 9151035, 1991 WL 779945	Schools
206.	January 29, 1992/ April 24, 1992	PLR 9217041, 1992 WL 801471	Hospital
207.	March 4, 1992/ May 29, 1992	PLR 9222054, 1992 WL 801776	Hospital
208	March 16, 1992/ June 12, 1992	PLR 9224044, 1992 WL 801886	Nursing homes

209.	March 24, 1992/ June 19, 1992	PLR 9225033, 1992 WL 801931	Hospital
210.	April 2, 1992/ June 26, 1992	PLR 9226072, 1992 WL 808864	Hospital
211.	April 3, 1992/ June 26, 1992	PLR 9226077, 1992 WL 808869	Health care services
212.	April 21, 1992/ July 17, 1992	PLR 9229031, 1992 WL 808984	Educational, health care and children's support institutions
213.	May 21, 1992/ August 14, 1992	PLR 9233051, 1992 WL 195050	Hospital
214.	July 2, 1992/ September 25, 1992	PLR 9239043, 1992 WL 235508	Hospital
215.	August 10, 1992/ November 6, 1992	PLR 9245030, 1992 WL 323032	Hospitals
216.	August 21, 1992/ November 6, 1992	PLR 9245046, 1992 WL 320326	Hospital
217.	August 20, 1992/ November 13, 1992	PLR 9246045, 1992 WL 329103	Hospital
218.	September 29, 1992/ December 24, 1992	PLR 9252032, 1992 WL 385434	Hospital, skilled care facility and an intermediate care facility
219.	November 6, 1992/ January 29, 1993	PLR 9304035, 1992 WL 421253	Non-profit retirement home
220.	November 23, 1992/ February 19, 1993	PLR 9307017, 1992 WL442847	Hospital
221.	December 3, 1992/ February 26, 1993	PLR 9308043, 1992 WL 448026	Hospital

222.	December 16, 1992/ March 12, 1993	PLR 9310040, 1992 WL 454474	Hospital
223.	December 18, 1992/ March 12, 1993	PLR 9310055, 1992 WL 454975	Non-profit institution of higher learning
224.	December 29, 1992/ March 26, 1993	PLR 9312031, 1992 WL 464277	Extended care facility
225.	January 12, 1993/ April 9, 1993	PLR 9314049, 1993 WL 107746	Hospital
226.	January 19, 1993/ April 16, 1993	PLR 9315022, 1993 WL 115675	Health care entity
227.	March 3, 1993/ May 28, 1993	PLR 9321074, 1993 WL 183396	System of acute, extended, and restorative health care institutions
228.	March 9, 1993/ June 4, 1993	PLR 9322032, 1993 WL 187060	Nursing homes and independent living facilities
229.	March 16, 1993/ June 11, 1993	PLR 9323031, 1993 WL 196373	Hospital
230.	March 18, 1993/ June 18, 1993	PLR 9324013, 1993 WL 211270	Hospital
231.	March 23, 1993/ June 18, 1993	PLR 9324031, 1993 WL 211280	Community and teaching hospitals and related facilities
232.	March 29, 1993/ June 25, 1993	PLR 9325044, 1993 WL 222185	Hospital
233.	April 16, 1993/ July 9, 1993	PLR 9327093, 1993 WL 247413	Hospitals
234.	April 19, 1993/ July 16, 1993	PLR 9328031, 1993 WL 262383	Hospital

235.	May 21, 1993/ August 13, 1993	PLR 9332045, 1993 WL 305015	Homes for aged and other dependent persons
236.	July 8, 1993/ October 1, 1993	PLR 9339025, 1993 WL 385092	Community and teaching hospitals and related facilities
237.	July 15, 1993/ October 8, 1993	PLR 9340059, 1993 WL 397587	Non-profit corporation in business of acquiring,
238.	July 20, 1993/ October 15, 1993	PLR 9341028, 1993 WL 408853	Hospitals
239.	August 4, 1993/ October 29, 1993	PLR 9343037, 1993 WL 436126	Hospital
240.	September 2, 1993/ November 26, 1993	PLR 9347039, 1993 WL 484617	Hospital
241.	September 13, 1993/ December 10, 1993	PLR 9349021, 1993 WL 504915	Hospitals
242.	September 28, 1993/ December 24, 1993	PLR 9351037, 1993 WL 529684	Health care institutions
243.	October 14, 1993/ January 7, 1994	PLR 9401036, 1993 WL 544929	Educational entity
244.	November 4, 1993/ January 28, 1994	PLR 9404031, 1993 WL 563007	Hospital
245.	December 8, 1993/ March 4, 1994	PLR 9409042, 1993 WL 596409	Hospitals and related health-care institutions
246.	December 22, 1993/ March 18, 1994	PLR 9411045, 1993 WL 602989	Hospital

247.	January 7, 1994/ April 1, 1994	PLR 9413049, 1994 WL 109199	Hospitals and other medical facilities
248.	February 4, 1994/ April 29, 1994	PLR 9417047, 1994 WL 155975	Hospital
249.	February 24, 1994/ May 20, 1994	PLR 9420038, 1994 WL 195775	Nursing home
250.	February 25, 1994/ May 20, 1994	PLR 9420040, 1994 WL 195777	Hospital
251.	March 24, 1994/ June 17, 1994	PLR 9424068, 1994 WL 265323	Hospital
252.	April 13, 1994/ July 8, 1994	PLR 9427031, 1994 WL 322704	Hospital
253.	April 20, 1994/ July 15, 1994	PLR 9428036, 1994 WL 368786	Hospital
254.	April 21, 1994/ July 15, 1994	PLR 9428038, 1994 WL 368788	Senior citizen retirement communities
255.	April 26, 1994/ July 22, 1994	PLR 9429024, 1994 WL 381319	Nursing home
256.	May 12, 1994/ August 5, 1994	PLR 9431053, 1994 WL 407408	Hospital
257.	May 19, 1994/ August 12, 1994	PLR 9432027, 1994 WL 420372	Secondary education schools
258.	June 15, 1994/ September 9, 1994	PLR 9436061, 1994 WL 485543	Nursing home
259.	July 7, 1994/ October 14, 1994	PLR 9441012, 1994 WL 559931	Schools
260.	July 18, 1994/ October 14, 1994	PLR 9441040, 1994 WL	Non-profit corporation that

		559959	owns and operates health care facilities
261.	July 21, 1994/ October 14, 1994	PLR 9441044, 1994 WL 559963	Nursing home
262.	July 21, 1994/ October 14, 1994	PLR 9441041, 1994 WL 559960	Hospital
263.	July 27, 1994/ October 21, 1994	PLR 9442033, 1994 WL 576806	Home to provide for poor, destitute and homeless children
264.	July 28, 1994/ October 21, 1994	PLR 9442034, 1994 WL 576807	Health care facilities
265.	August 5, 1994/ October 28, 1994	PLR 9443043, 1994 WL 589289	University
266.	August 8, 1994/ November 4, 1994	PLR 9444036, 1994 WL 602253	Hospital
267.	August 11, 1994/ November 4, 1994	PLR 9444055, 1994 WL 602272	Hospitals
268.	August 18, 1994/ November 10, 1994	PLR 9445031, 1994 WL 622097	Medical center
269.	August 19, 1994/ November 10, 1994	PLR 9445030, 1994 WL 622096	Nonprofit facility dedicated to serving physically challenged and elderly individuals
270.	August 24, 1994/ November 18, 1994	PLR 9446037, 1994 WL 648763	Nonprofit corporation that carries out religious, charitable and educational mission of church
271.	August 30, 1994/	PLR 9447054,	Hospital

	November 25, 1994	1994 WL 659770	
272.	June 24, 1994/ September 16, 1994	PLR 9437045, 1994 WL 503623	Nursing Facility
273.	September 9, 1994/ December 2, 1994	PLR 9448048, 1994 WL 671961	Hospital
274.	September 12, 1994/ December 9, 1994	PLR 9449015, 1994 WL 686014	Health care facility
275.	September 16, 1994/ December 9, 1994	PLR 9449023, 1994 WL 686022	Nonprofit corporation that provides services to elderly
276.	September 20, 1994/ December 16, 1994	PLR 9450031, 1994 WL 701909	Charitable non-profit corporation
277.	September 27, 1994/ December 23, 1994	PLR 9451063, 1994 WL 709991	Education institution
278.	September 29, 1994/ December 23, 1994	PLR 9451070, 1994 WL 709998	Hospital
279.	September 29, 1994/ December 23, 1994	PLR 9451071, 1994 WL 709999	Hospital
280.	July 8, 1994/ September 30, 1994	PLR 9439021, 1994 WL 528737	Health care system
281.	September 30, 1994/ December 23, 1994	PLR 9451084, 1994 WL 710012	Health care entity
282.	September 30, 1994/ December 23, 1994	PLR 9451081, 1994 WL 710009	Health care entity
283.	September 30, 1994/ December 23, 1994	PLR 9451080, 1994 WL 710008	Health care entity
284.	September 30, 1994/ December 23, 1994	PLR 9451083, 1994 WL	Hospital

		710011	
285.	September 30, 1994/ December 23, 1994	PLR 9451086, 1994 WL 710014	Hospital
286.	October 6, 1994/ December 30, 1994	PLR 9452047, 1994 WL 719269	Health care system
287.	November 1, 1994/ January 27, 1995	PLR 9504043, 1994 WL 741325	Non-profit corporation dedicated to the provision of charitable, healthcare, and community services
288.	November 3, 1994/ January 27, 1995	PLR 9504046, 1994 WL 741328	Hospital
289.	November 7, 1994/ February 3, 1995	PLR 9505021, 1994 WL 747917	Non-profit health care administration corporation
290.	November 23, 1994/ February 17, 1995	PLR 9507042, 1994 WL 760201	Hospital
291.	November 23, 1994/ February 17, 1995	PLR 9507043, 1994 WL 760202	Health care entity
292.	December 1, 1994/ February 24, 1995	PLR 9508038, 1994 WL 761764	Hospital
293.	December 14, 1994/ March 10, 1995	PLR 9510067, 1994 WL 770977	Acute-care hospital facility
294.	January 2, 1995/ March 31, 1995	PLR 9513018, 1995 WL 137965	Academy
295.	January 25, 1995/ April 21, 1995	PLR 9516054, 1995 WL 234000	Society for the protection of destitute children
296.	January 31, 1995/ April 28, 1995	PLR 9517045, 1995 WL	Health care entity

		246955	
297.	February 6, 1995/ May 5, 1995	PLR 9518020, 1995 WL 260647	Nonprofit that operated health care and other facilities.
298.	February 24, 1995/ May 19, 1995	PLR 9520053, 1995 WL 303393	Hospitals
299.	February 28, 1995/ May 26, 1995	PLR 9521033, 1995 WL 317961	Nonprofit membership organization
300.	March 1, 1995/ May 26, 1995	PLR 9521038, 1995 WL 317966	Nonprofit corporation
301.	March 9, 1995/ June 2, 1995	PLR 9522055, 1995 WL 327513	Educational and religious services
302.	March 14, 1995/ June 9, 1995	PLR 9523026, 1995 WL 346857	Hospital
303.	March 22, 1995/ June 16, 1995	PLR 9524029, 1995 WL 359287	Social service agency
304.	March 28, 1995/ June 23, 1995	PLR 9525061, 1995 WL 372553	Hospital
305.	March 29, 1995/ June 23, 1995	PLR 9525066, 1995 WL 372558	Non-profit parent corporation of health care facilities
306.	April 3, 1995/ June 30, 1995	PLR 9526022, 1995 WL 386107	University
307.	April 19, 1995/ July 14, 1995	PLR 9528033, 1995 WL 414113	Hospital
308.	May 8, 1995/ August 4, 1995	PLR 9531034, 1995 WL 459577	Non-profit charitable corporation
309.	May 16, 1995/ August 11, 1995	PLR 9532033, 1995 WL	Health and medical facility

		474448	
310.	June 5, 1995/ September 1, 1995	PLR 9535046, 1995 WL 517834	Hospital
311.	June 23, 1995/ September 15 1995	PLR 9537034, 1995 WL 550724	Non-profit corporation that operates nursing homes
312.	July 31, 1995/ October 27, 1995	PLR 9543044, 1995 WL 632203	Non-profit corporation
313.	August 25, 1995/ November 17, 1995	PLR 9546033, 1995 WL 686466	Hospitals
314.	August 29, 1995/ November 24, 1995	PLR 9547033, 1995 WL 693640	Health service entity
315.	September 1, 1995/ November 24, 1995	PLR 9547048, 1995 WL 693655	School
316.	September 6, 1995/ December 1, 1995	PLR 9548033, 1995 WL 705917	Hospital
317.	September 15, 1995/ December 8, 1995	PLR 9549036, 1995 WL 724060	Non-profit corporation
318.	September 20, 1995/ December 15, 1995	PLR 9550037, 1995 WL 743716	Hospital
319.	September 28, 1995/ December 22, 1995	PLR 9551041, 1995 WL 756463	Hospital
320.	September 29, 1995/ December 22, 1995	PLR 9551042, 1995 WL 756464	Non-profit corporation engaged in medical-related services
321.	October 2, 1995/ December 29, 1995	PLR 9552050, 1995 WL 764888	Health Facility
322.	October 15, 1995/	PLR 9552054,	Hospital

	December 29, 1995	1995 WL 764892	
323.	December 5, 1995/ March 1, 1996	PLR 9609038, 1996 WL 87790	Nonprofit corporation that conducts religious and educational activities
324.	January 31, 1996/ April 26, 1996	PLR 9617047, 1996 WL 202064	Hospital
326.	February 13, 1996/ May 10, 1996	PLR 9619073, 1996 WL 241530	Non-profit corporation that operates mental health facilities
327.	February 28, 1996/ May 24, 1996	PLR 9621044, 1996 WL 275680	Non-profit corporation that provides Christian education
328.	March 1, 1996/ May 24, 1996	PLR 9621046, 1996 WL 275682	Social services agency
329.	March 19, 1996/ June 14, 1996	PLR 9624027, 1996 WL 326434	Medical System
330.	March 27, 1996/ June 21, 1996	PLR 9625056, 1996 WL 340359	Hospital
331.	April 10, 1996/ July 5, 1996	PLR 9627025, 1996 WL 374443	Hospital
332.	April 11, 1996/ July 5, 1996	PLR 9627028, 1996 WL 374446	Hospital
333.	April 19, 1996/ July 19, 1996	PLR 9629015, 1996 WL 404743	Mental health facility
334.	April 30, 1996/ July 26, 1996	PLR 9630037, 1996 WL 417988	Non-profit organization that provides health care services to the poor

335.	May 8, 1996/ July 26, 1996	PLR 9630042, 1996 WL 417993	School
336.	May 16, 1996/ August 9, 1996	PLR 9632018, 1996 WL 448646	Home for the developmentally disabled
337.	May 20, 1996/ August 16, 1996	PLR 9633035, 1996 WL 465963	Hospital
338.	June 13, 1996/ September 13, 1996	PLR 9637035, 1996 WL 518939	Non-profit organization that operates a high school
339.	June 25, 1996/ September 13, 1996	PLR 9637056, 1996 WL 518960	Community for the elderly
340.	July 17, 1996/ October 11, 1996	PLR 9641032, 1996 WL 584455	Health care institutions
341.	August 2, 1996/ October 25, 1996	PLR 9643038, 1996 WL 616086	Hospital
342.	August 5, 1996/ November 1, 1996	PLR 9644062, 1996 WL 633154	Non-profit that operates and owns retirement and nursing facilities
343.	August 26, 1996/ November 22, 1996	PLR 9647024, 1996 WL 674624	Hospital
344.	September 30, 1996/ December 27, 1996	PLR 9652023, 1996 WL 737730	Elderly care services organization
345.	October 16, 1996/ January 10, 1997	PLR 9702035, 1997 WL 8229	Non-profit corporation dedicated to religious education
346.	October 29, 1996/ January 24, 1997	PLR 9704020, 1997 WL 26121	Parent corporation of 50 health, shelter and spiritual

			development services
347.	November 4, 1996/ January 31, 1997	PLR 9705021, 1997 WL 36130	Charitable organization
348.	December 31, 1996/ March 28, 1997	PLR 9713021, 1997 WL 140957	Hospital
349.	January 31, 1997/ April 25, 1997	PLR 9717039, 1997 WL 200940	Hospital
350.	February 10, 1997/ May 9, 1997	PLR 9719037, 1997 WL 236025	Nursing Home
351.	February 13, 1997/ May 9, 1997	PLR 9719042, 1997 WL 236030	College preparatory school for girls
352.	March 18, 1997/ June 13, 1997	PLR 9724023, 1997 WL 320065	Hospitals
353.	March 28, 1997/ June 20, 1997	PLR 9725043, 1997 WL 337377	Non-profit corporation
354.	April 8, 1997/ July 3, 1997	PLR 9727032, 1997 WL 366260	School
355.	April 16, 1997/ July 11, 1997	PLR 9728046, 1997 WL 382016	Health care facility
356.	April 28, 1997/ July 25, 1997	PLR 9730026, 1997 WL 41 5396	Hospital
357.	April 28, 1997/ July 25, 1997	PLR 9730027, 1997 WL 415397	Hospital
358.	April 28, 1997/ July 25, 1997	PLR 9730031, 1997 WL 415401	Non-profit corporation that provides planning and
359.	April 28, 1997/ July 25, 1997	PLR 9730030, 1997 WL 41	Hospital

		5400	
360.	April 28, 1997/ July 25, 1997	PLR 9730028, 1997 WL 415398	Hospital
361.	April 28, 1997/ July 25, 1997	PLR 9730029, 1997 WL 415399	Home health agency
362.	May 27, 1997/ August 22, 1997	PLR 9734053, 1997 WL 477025	Hospital
363.	July 25, 1997/ October 17, 1997	PLR 9742038, 1997 WL 639487	Communal Welfare Organization
364.	August 18, 1997/ November 14, 1997	PLR 9746055, 1997 WL 708302	Entity that assists immigrants and refugees
365.	August 27, 1997/ November 21, 1997	PLR 9747043, 1997 WL 723543	Medical Services
366.	September 3, 1997/ November 28, 1997	PLR 9748036, 1997 WL 734343	Services and facilities for aging
367.	September 30, 1997/ December 29, 1997	PLR 9752069, 1997 WL 788137	Hospital facilities
368.	October 30, 1997/ January 23, 1998	PLR 9804060, 1998 WL 22237	Hospital
369.	November 14, 1997/ February 6, 1998	PLR 9806015, 1998 WL 45511	Home for elderly
370.	November 17, 1997/ February 13, 1998	PLR 9807024, 1998 WL 57897	Entity provides services for Native Americans
371.	January 10, 1998/ July 2, 1998	PLR 9827001, 1998 WL 352867	Hospital
372.	January 29, 1998/ April 22, 1988	PLR 8816068, 1988 WL 571028	Hospitals

373.	January 29, 1998/ April 22, 1988	PLR 8816075, 1988 WL 571035	Hospitals
374.	March 4, 1998/ May 29, 1998	PLR 9822054, 1998 WL 273503	Hospital and health care provider
375.	March 18, 1998/ June 12, 1998	PLR 9824049, 1998 WL 308432	Hospital
376.	March 26, 1998/ June 19, 1998	PLR 9825036, 1998 WL 322644	Hospital
377.	March 26, 1998/ June 19, 1998	PLR 9825037, 1998 WL 322645	Entity with purpose of furthering health care
378.	April 24, 1998/ July 17, 1998	PLR 9829060, 1998 WL 398709	Hospital
379.	April 28, 1998/ July 24, 1998	PLR 9830031, 1998 WL 414968	Hospital
380.	August 6, 1998/ October 30, 1998	PLR 9844039, 1998 WL 756795	Hospital
381.	August 19, 1998/ November 13, 1998	PLR 9846037, 1998 WL 789781	Entity that provides management and administrative services to health care affiliates
382.	August 20, 1998/ November 13, 1998	PLR 9846046, 1998 WL 789790	Health care system
383.	August 20, 1998/ November 13, 1998	PLR 9846043, 1998 WL 789787	Missionary activities
384.	August 24, 1998/ November 20, 1998	PLR 9847024, 1998 WL 803382	Hospital
385.	August 24, 1998/ November 20, 1998	PLR 9847023, 1998 WL	Hospital

		803381	
386.	September 1, 1998/ November 27, 1998	PLR 9848021, 1998 WL 815871	Hospital
387.	September 10, 1998/ December 4, 1998	PLR 9849026, 1998 WL 835487	Non-profit corporation that fundraises money for religious nonprofits
388.	September 28, 1998/ December 25, 1998	PLR 9852025, 1998 WL 894986	Hospital
389.	September 28, 1998/ December 25, 1998	PLR 9852024, 1998 WL 894985	Non-profit corporation that owns and operates health care facilities
390.	September 29, 1998/ December 25, 1998	PLR 9852045, 1998 WL 895006	Non-profit human services organization
391.	September 30, 1998/ December 25, 1998	PLR 9852050, 1998 WL 895011	Health care system
392.	October 5, 1998/ December 31, 1998	PLR 9853053, 1998 WL 908419	Residential home for the aged
393.	October 15, 1998/ January 8, 1999	1999 WL 5707 (IRS PLR)	Hospital
394.	November 3, 1998/ January 29, 1999	PLR 199904041, 1999 WL 36831	Non-profit corporation that owns and operates hospitals
395.	December 22, 1998/ March 19, 1999	PLR 199911059, 1999 WL 148595	Nonprofit corporation that provides elderly and nursing care
396.	February 18, 1999/ May 14, 1999	PLR 199919040, 1999 WL 302318	Services for the sick and needy
397.	July 1, 1999/ September 24, 1999	PLR 199938049,	Services for elderly

		1999 WL 744411	
398.	March 16, 1999/ June 11, 1999	PLR 199923055, 1999 WL 379204	Services for elderly
399.	March 29, 1999/ June 25, 1999	PLR 199925049, 1999 WL 424876	Hospital
400.	April 6, 1999/ July 2, 1999	PLR 199926046, 1999 WL 448257	Non-profit corporation
401.	May 14, 1999/ August 6, 1999	PLR 199931053, 1999 WL 589485	Non-profit corporation
402.	May 28, 1999/ August 20, 1999	PLR 199933053, 1999 WL 634191	Educational facility
403.	July 28, 1999/ October 22, 1999	PLR 199942051, 1999 WL 963195	Women's education facility
404.	July 29, 1999/ October 22, 1999	PLR 199942053, 1999 WL 963197	Hospital
405.	September 7, 1999/ December 3, 1999	PLR 199948035, 1999 WL 1100130	Acute care hospital
406.	June 21, 1999/ September 17, 1999	PLR 199937047, 1999 WL 723037	Health care services
407.	September 30, 1999/ December 24 1999	PLR 199951049, 1999 WL 1247323	Hospital

408.	October 18, 1999/ January 14, 2000	PLR 200002050, 2000 WL 26462	Corporation is multi-institutional health care delivery system
409.	November 19, 1999/ February 11, 2000	PLR 200006058, 2000 WL 147482	Hospital
410.	November 23, 1999/ February 18, 2000	PLR 200007036, 2000 WL 193750	Management company for health care entities
411.	December 15, 1999/ March 10, 2000	PLR 200010059, 2000 WL 1183567	Hospital
412.	February 23, 2000/ June 2, 2000	PLR 200022057, 2000 WL 1930611	Hospital
413.	March 3, 2000/ May 25, 2000	PLR 200021063, 2000 WL 681292	Entity to support missionary services
414.	March 15, 2000/ June 9, 2000	PLR 200023055, 2000 WL 1998084	Hospital
415.	March 20, 2000/ June 9, 2000	PLR 200023057, 2000 WL 1998090	Corporation involved in health care
416.	March 28, 2000/ June 23, 2000	PLR 200025061, 2000 WL 33116067	University
417.	April 4, 2000/ June 30 2000	PLR 200026030, 2000 WL 33116102	Hospital
418.	June 15, 2000/	PLR	Hospital

	September 8, 2000	200036051, 2000 WL 33119678	
419.	July 26, 2000/ October 20, 2000	PLR 200042029, 2000 WL 33120334	Hospital
420.	August 7, 2000/ November 3, 2000	PLR 200044043, 2000 WL 33122065	Hospital
421.	August 8, 2000/ October 27, 2000	PLR 200043055, 2000 WL 33120394	Health care organizations
422.	August 30, 2000/ November 22, 2000	PLR 200047050, 2000 WL 33122197	Homes for aged
423.	September 8, 2000/ December 1, 2000	PLR 200048050, 2000 WL 33123788	Hospitals
424.	September 26, 2000/ December 22, 2000	PLR 200051050, 2000 WL 33126656	Health care facility
425.	November 22, 2000/ February 16, 2001	PLR 200107042, 2001 WL 129023	Health services
426.	November 28, 2000/ February 23, 2001	PLR 200108044, 2001 WL 175906	Elder care
427.	November 29, 2000/ February 23, 2001	PLR 200 I 08050, 2001 WL 175912	Health care
428.	March 19, 2001/ June 15, 2001	PLR 200124025, 2001 WL 670874	School

429.	March 29, 2001/ June 22, 2001	PLR 200125095, 2001 WL 702264	Education
430.	June 11, 2001/ September 7, 2001	PLR 200136027, 2001 WL 1022039	Hospital
431.	July 16, 2001/ November 30, 2001	PLR 200148055, 2001 WL 1521718	Homes for the elderly
432.	July 26, 2001/ December 7, 2001	PLR 200149038, 2001 WL 1559050	Elder care
433.	November 19, 2001/ February 15, 2002	PLR 200207027, 2002 WL 228637	Elder care
434.	May 2, 2002/ July 26, 2002	PLR 200230043, 2002 WL 1730132	University
435.	June 3, 2002/ August 30, 2002	PLR 200235032, 2002 WL 1999533	Home for elderly
436.	June 10, 2002/ September 6, 2002	PLR 200236048, 2002 WL 31003399	Hospitals and health care organizations
437.	June 12, 2002/ September 6, 2002	PLR 200236046, 2002 WL 31003397	Residential and treatment services
438.	July 3, 2002/ September 27, 2002	PLR 200239036, 2002 WL 31 152989	Resident care facility for the sick and elderly
439.	July 16, 2002/ October 11, 2002	PLR 200241051, 2002 WL	Health, shelter, and spiritual

		31273130	development services
440.	July 31, 2002/ October 25, 2002	PLR 200243053, 2002 WL 31402509	Health care system
441.	August 19, 2002/ May 16, 2003	PLR 200320028, 2003 WL 21130126	Health care system
442.	September 23, 2002/ December 20, 2002	PLR 200251015, 2002 WL 31846285	Non-profit college
443.	October 15, 2002/ April 25, 2003	PLR 200317029, 2003 WL 1950950	Health care system
444.	November 4, 2002/ April 25, 2003	PLR 200317030, 2003 WL 1950951	Health care system
445.	November 5, 2002/ January 31, 2003	PLR 200305031, 2003 WL 205114	Health care system
446.	November 22, 2002/ February 14, 2003	PLR 200307097, 2003 WL 329402	Hospitals
447.	November 22, 2002/ February 14, 2003	PLR 200307096, 2003 WL 329401	Hospitals
448.	November 26, 2002/ April 25, 2003	PLR 200317035, 2003 WL 1950956	Nursing home
449.	December 3, 2002/ April 25, 2003	PLR 200317038, 2003 WL 1950959	Medical center

450.	December 12, 2002/ April 25, 2003	PLR 200317039, 2003 WL 1950960	Health care system
451.	December 13, 2002/ March 7, 2003	PLR 200310025, 2003 WL 874128	Health care system
452.	December 30, 2002/ March 28, 2003	PLR 200313019, 2003 WL 1606074	Hospital
453.	January 16, 2003/ April 18, 2003	PLR 200316044, 2003 WL 1901408	Hospital
454.	March 13, 2003/ June 6, 2003	PLR 200323048, 2003 WL 21300922	Medical center
455.	April 2, 2003/ June 27, 2003	PLR 200326045, 2003 WL 21483128	Nursing homes and assisted living centers
456.	April 30, 2003/ July 25, 2003	PLR 200330042, 2003 WL 21718726	Hospital
457.	May 9, 2003/ August 1, 2003	PLR 200331010, 2003 WL 21774646	Health care system
458.	June 23, 2003/ September 19, 2003	PLR 200338020, 2003 WL 22208696	Social services agency
459.	June 26, 2003/ September 19, 2003	PLR 200338021, 2003 WL 22208697	Medical center
460.	September 4, 2003/ November 28, 2003	PLR 200348030,	Hospitals

		2003 WL 22814651	
461.	September 17, 2003/ December 12, 2003	PLR 200350021, 2003 WL 22931717	Medical center
462.	October 8, 2003/ January 2, 2004	PLR 200401022, 2004 WL 23301	Health care system
463.	May 21, 2004/ August 13, 2004	PLR 200433021, 2004 WL 1803764	Health care system
464.	June 9, 2004/ September 3, 2004	PLR 200436013, 2004 WL 1950352	Charitable work
465.	August 2, 2004/ October 29, 2004	PLR 200444046, 2004 WL 2419383	Hospital
466.	December 15, 2004/ March 11, 2005	PLR 200510043, 2005 WL 568660	Seminary
467.	January 10, 2005/ April 8, 2005	PLR 200514025, 2005 WL 807270	Services to persons with developmental disabilities
468.	November 28, 2006/ February 23, 2007	PLR 200708090, 2007 WL 550201	School
469.	August 2, 2007/ October 26, 2007	PLR 200743036, 2007 WL 3123978	College
470.	August 30, 2007/ November 23, 2007	PLR 200747022, 2007 WL 4141480	Hospital

471.	January 25, 2008/ April 18, 2008	PLR 200816031, 2008 WL 1766191	Religious organization
472.	March 7, 2012/ June 1, 2012	PLR 201222052, 2012 WL 1961462	Educational services
473.	March 19, 2012/ June 15, 2012	PLR 201224042, 2012 WL 2164609	Lobbying; educational programs
474.	May 3, 2012 / July 27, 2012	PLR 201230031, 2012 WL 3057842	College
475.	May 25, 2012/ August 17, 2012	PLR 201233027, 2012 WL 3540133	Charitable work
476.	October 18, 2012 / January 11, 2013	PLR 201302045, 2013 WL 139103	School
477.	October 22, 2012/ January 18, 2013	PLR 201303024, 2013 WL 203360	Hospitals
478.	November 26, 2012/ February 22, 2013	PLR 201308033, 2013 WL 653327	Educational institution
479.	December 3, 2012/ March 1, 2013	PLR 201309028, 2013 WL 771310	Health care system
480.	February 6, 2013/ May 3, 2013	PLR 201318030, 2013 WL 1854155	Hospitals
481.	February 8, 2013/ May 10, 2013	PLR 201319036,	Hospitals

		2013 WL 1928485	
482.	March 8, 2013/ May 31, 2013	PLR 201322051, 2013 WL 2370081	Educational institution
483.	May 22, 2013/ August 16, 2013	PLR 201333024, 2013 WL 4388285	Educational institution
484.	July 3, 2013/ September 27, 2013	PLR 201339004, 2013 WL 5394367	Educational institution
485.	August 14, 2013/ November 8, 2013	PLR 201345041, 2013 WL 6038333	Various charitable works
486.	August 14, 2013/ November 8 2013	PLR 201345042, 2013 WL 6038334	Hospital
487.	September 16, 2013/ December 13, 2013	PLR 201350048, 2013 WL 6536905	Health care programs
488.	January 13, 2014/ April 11, 2014	PLR 201415015, 2014 WL 1399249	Retirement care facility
489.	February 27, 2014/ May 23, 2014	PLR 201421031, 2014 WL 2136100	Elder care center
490.	March 24, 2014/ June 20. 2014	PLR 201425025, 2014 WL 2800197	Various charitable works
491.	May 16, 2014/ August 8, 2014	PLR 201432028, 2014 WL 3882655	Educational institution

492.	July 21, 2014/ October 17, 2014	PLR 201442072, 2014 WL 5302986	Various charitable works
493.	November 3, 2014/ January 30, 2015	PLR 201505048 (IRS PLR), 2015 WL 389734	Residential care for people with disabilities
494.	November 3, 2014/ January 30, 2015	PLR 201505049 (IRS PLR), 2015 WL 389735	Daycare
495.	November 3, 2014/ January 30, 2015	PLR 201505050 (IRS PLR), 2015 WL 389736	Senior care center
496.	November 3, 2014/ January 30, 2015	PLR 201505051 (IRS PLR), 2015 WL 389737	Senior care center
497.	June 9, 2015/ September 11, 2015	PLR 201537025 (IRS PLR), 2015 WL 5297634	Elder care facility for religious order
498.	June 17, 2015/ September 18, 2015	PLR 201538023 (IRS PLR), 2015 WL 5471502	Ministry and various charitable works
499.	June 17, 2015/ September 18, 2015	PLR 201538024 (IRS PLR), 2015 WL 5471503	Church and school
500.	July 27, 2015/ October 23, 2015	PLR 201543012 (IRS PLR),	College

		2015 WL 6408755	
501.	September 16, 2015/ December 18, 2015	PLR 201551004 (IRS PLR), 2015 WL 9245327	University

RECORD
AND
BRIEFS

No. 16-86

IN THE

Supreme Court of the United States

SAINT PETER'S HEALTHCARE SYSTEM, ET AL.,

Petitioners,

v.

LAURENCE KAPLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

KAREN L. HANDORF
Counsel of Record
MICHELLE C. YAU
COHEN MILSTEIN
SELLERS & TOLL PLLC
1100 New York Ave. NW,
Suite 500 East
Washington, DC 20005
(202) 408-4600
khandorf@cohenmilstein.com

JAMES A. FELDMAN
5335 Wisconsin Ave. NW,
Suite 440
Washington, DC 20015

LYNN LINCOLN SARKO
MATTHEW GEREND
KELLER ROHRBACK L.L.P.
1201 Third Ave.,
Suite 3200
Seattle, WA 98101
(206) 623-1900

RON KILGARD
KELLER ROHRBACK L.L.P.
3101 North Central Ave.,
Suite 1400
Phoenix, AZ 85012
(602) 248-0088

QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 ("ERISA") provides significant protections for employees' pensions, but it includes an exemption for a "church plan." 29 U.S.C. §1003(b)(2). A "church plan" is a pension or welfare plan "established and maintained ... by a church," *id.* §1002(33)(A), which "includes" a plan "maintained" by a pension board or similar administrative organization controlled by or associated with a church, *id.* §1002(33)(C)(i). All three courts of appeals to consider the issue have concluded without dissent that the exemption does not extend to plans that were not "established ... by" a church, and that therefore a pension plan established by a large health care provider like the one involved here is not exempt from ERISA.

The question presented is:

Whether a pension plan for employees of a large health-care provider is exempt from—and therefore its participants are unprotected by—ERISA, even though the plan concededly was not "established" by a church.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

STATEMENT 1

REASONS FOR DENYING THE PETITION 8

I. THE ONLY THREE COURTS OF APPEALS TO ADDRESS THE ISSUE HAVE AGREED, WITHOUT DISSENT, THAT A CHURCH PLAN MUST BE ESTABLISHED BY A CHURCH 9

A. The Third, Seventh, and Ninth Circuits Have All Rejected Petitioners' Arguments Without Difficulty 9

B. The Question Presented Here Was Not Before the Fourth and Eighth Circuits 11

II. GRANTING REVIEW WOULD PUT AT RISK SPHS'S 2,800 EMPLOYEES AND IS UNWARRANTED AT THIS INTERLOCUTORY STAGE 12

A. There Is No "Settled Law" that Supports Petitioners' Interpretation 12

B. Further Delay of this Litigation Would Impose Severe Costs on SPHS's Employees 15

TABLE OF CONTENTS
(continued)

C. Petitioners' Exaggerated Claims of Injury from Allowing this Litigation to Continue Are Without Merit 17

III. PETITIONERS' PLAN IS NOT A "CHURCH PLAN" 22

A. The Text and Legislative History Both Make Clear that a Church Plan Must Be "Established" by a Church 22

B. The Only Constitutional Problem in this Case Would Arise if Petitioners' View of the Statute Prevailed 24

IV. THIS CASE IS IN ANY EVENT A POOR VEHICLE 27

CONCLUSION 31

TABLE OF AUTHORITIES

Page

CASES:

Am. Guidance Found., Inc. v. United States,
490 F. Supp. 304 (D.D.C. 1980) 26

Christensen v. Harris County,
529 U.S. 576 (2000) 13

Chronister v. Baptist Health,
442 F.3d 648 (8th Cir. 2006) 11, 30

Coleman-Edwards v. Simpson,
330 F. App'x 218 (2d Cir. 2009) 15

Corp. of Presiding Bishop of Church of Jesus Christ of the Latter-day Saints v. Amos,
483 U.S. 327 (1987) 26

Cutter v. Wilkinson,
544 U.S. 709 (2005) 27

Egelhoff v. Egelhoff ex rel. Breiner,
532 U.S. 141 (2001) 14

Estate of Thornton v. Caldor,
472 U.S. 703 (1985) 26

Found. of Human Understanding v. United States,
614 F.3d 1383 (Fed. Cir. 2010) 25

Gobeille v. Liberty Mut. Ins. Co.,
136 S. Ct. 936 (2016) 14

Board of Education v. Grumet,
512 U.S. 687 (1994) 26

TABLE OF AUTHORITIES
(continued)

United States v. Lee,
455 U.S. 252 (1982).....27

Lockheed Corp. v. Spink,
517 U.S. 882 (1996).....1

Lown v. Continental Casualty Co.,
238 F.3d 543 (4th Cir. 2001).....11, 30

Nachman Corp. v. PBGC,
446 U.S. 359 (1980).....15

Rollins v. Dignity Health,
2016 WL 3997259 (9th Cir. 2016) 10, 13, 25

Rollins v. Dignity Health,
59 F. Supp. 3d 965 (N.D. Cal. 2014).....25

Stapleton v. Advocate Health Care Network,
817 F.3d 517 (7th Cir. 2016).....*passim*

STATUTES:

26 U.S.C. §414(e).....4

26 U.S.C. §501(r) 20

26 U.S.C. §6110(k)(3) 13

28 U.S.C. §1292(b).....5

29 U.S.C. §1001(a).....1, 15

29 U.S.C. §1002(33) (1974) 2, 3

29 U.S.C. §1002(33).....*passim*

29 U.S.C. §1003(b)(2) 1

29 U.S.C. §1104(a)(1) 21

29 U.S.C. §1132(c)(3).....21

TABLE OF AUTHORITIES
(continued)

42 U.S.C. §1395dd 20

N.J. Stat. Ann. §26:2H-12.52 20

N.J. Stat. Ann. §26:2H-18.58 20

N.J. Stat. Ann. §26:2H-18.64 20

LEGISLATIVE HISTORY:

124 Cong. Rec. 12,107 (1978) 24

S. Rep. No. 93-383 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4889 ..... 2, 26

OTHER AUTHORITIES:

29 C.F.R. §2509.2015-01 (2015) 22

80 Fed. Reg. 65135-01 (Oct. 26, 2015) 22

IRS Gen. Couns. Mem. 39,007, 1983 WL 197946 (Nov. 2, 1982) 12, 13

IRS Rev. Rul. 69-545, 1969 WL 19168 (Jan. 1, 1969) 20

N.J. Admin. Code §10:52-11.14 20

Rev. Proc. 2016-1, §2.01, 2016 WL 20933 (Jan. 4, 2016) 13

Pension Rights Center, *91 church plan PBGC premium refunds in the years 1992 to 1998 (and 2013)* 18

STATEMENT

Petitioner Saint Peter's Healthcare System (SPHS) is a nonprofit healthcare entity that operates a hospital and other medical facilities and employs over 2,800 people. Pet. App. 6a. SPHS is not a church. *Id.* The petition represents petitioners' attempt—in the face of consistent rulings (without dissent) by the only three courts of appeals to address the issue—to exempt the SPHS pension plan from ERISA on the ground that it is a "church plan." 29 U.S.C. §1003(b)(2). This case presents the same question as *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016), *petition for cert. filed*, July 15, 2016 (No. 16-74). ERISA's definition of a "church plan" makes clear that plans like SPHS's—which were not established by any church—are not exempt, as the court below and each of the other courts of appeals that have ruled on the issue have concluded. The petition should be denied.

1. ERISA was designed to remedy "the lack of employee information and adequate safeguards" and the "inadequacy of current minimum standards" for pension (and welfare) plans. 29 U.S.C. §1001(a). ERISA "seek[s] to ensure that employees will not be left empty-handed once employers have guaranteed them certain benefits." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996).

ERISA includes an exemption for "church plan[s]." 29 U.S.C. §1003(b)(2). "The term 'church plan' means a plan established and maintained for its employees by a church or by a convention or association of

churches[.]"[1] 29 U.S.C. §1002(33)(A) (1974). The purpose of that exemption was to avoid "examinations of books and records" that "might be regarded as an unjustified invasion of the confidential relationship ... with regard to churches and their religious activities." S. Rep. No. 93-383 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4889, 4965. The version originally enacted in 1974 temporarily (until 1982) permitted pre-existing plans "established and maintained by a church" to cover employees of church-affiliated agencies. 29 U.S.C. §1002(33)(C) (1974).

In 1980, Congress amended the church plan exemption to address two concerns. First, churches wanted continuing authority, past 1982, to include employees of church-affiliated agencies in their plans. Second, the requirement that church plans be "maintained" by a church was of concern to certain churches that used distinct financial services organizations (often called "pension boards") to maintain and administer their pension plans. Pet. App. 18a-19a.

To address the 1982 sunset provision, Congress amended the definition of "employee" under the church plan definition, such that an "employee of a church ... includes ... an employee of an organization ... which is controlled by or associated with a church." 29 U.S.C. §1002(33)(C)(ii)(II); *see also id.* §1002(33)(C)(iii) (church shall be "deemed" employer of such "employee[s]"). Because a "church plan" was

---

[1] "Church," as used herein, refers to any church or convention or association of churches. It also refers to a synagogue, mosque, or other house of worship.

still defined as "a plan established and maintained ... *for its employees* ... by a church," *id.* §1002(33)(A) (emphasis added), the amendments allowed churches to include in their benefit plans not only their own employees, but also employees of certain church-associated organizations.

To address churches that maintained their plans through separate organizations, i.e., pension boards, Congress enacted the provision at issue here:

> A plan established and maintained for its employees ... by a church or by a convention or association of churches includes a plan maintained by an organization, ... the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Id. §1002(33)(C)(i). A church could now retain the exemption even if it turned over maintenance of its plan to an organization primarily engaged in plan management and controlled by or associated with the church.

2. SPHS provides retirement benefits for its more than 2,800 employees through the defined-benefit Saint Peter's Healthcare System Retirement Plan (the "Plan"). SPHS established the Plan in 1974, and from then until at least 2006 operated the plan subject to ERISA and so informed its employees. Pet. App. 6a. In 2006, SPHS applied to the IRS seeking a private letter ruling regarding whether the Plan met

the definition of a "church plan" for purposes of a parallel provision of the Internal Revenue Code, 26 U.S.C. §414(e). Pet. App. 7a. The IRS issued the requested private letter ruling in 2013, after this case was commenced. Pet. App. 32a. Meanwhile, in 2010, SPHS closed the Plan to new employees and announced that new employees would instead participate in a new, defined-contribution plan that would not be operated as a church plan but would instead be subject to ERISA. Compl. ¶¶61-62, C.A. App. A62.

Respondent is a former employee of SPHS with claims to benefits under the Plan. He brought this action on behalf of himself and other participants and beneficiaries in the Plan, against SPHS and the other petitioners, who are involved in the administration of the Plan. The complaint alleges that petitioners violated ERISA by, *inter alia*, failing to follow ERISA's reporting and disclosure requirements and failing to insure and adequately fund the Plan. Pet. App. 7a, 33a. Respondent seeks a declaration that the Plan is not a church plan under ERISA, an injunction requiring SPHS to reform the Plan to comply with ERISA and otherwise to satisfy ERISA's requirements, and civil penalties and damages. Compl. 42-44, C.A. App. A88-A90.

Respondent alleged that, because the Plan was not "established" by a church, it does not qualify as an exempt church plan. That is the issue decided by the court of appeals, in respondent's favor. Respondent also alleges two alternative, and independent, reasons why the Plan does not qualify as a "church plan" under the statute. *See infra* pp.28-30; Pet. App. 17a n.8. Finally, even if the Plan satisfied the statutory

requirements, it would nonetheless be subject to ERISA because such a bald religious preference for a religiously-affiliated institution, unrelated to any need to accommodate religious faith or practice, would violate the Establishment Clause. *See infra* pp. 26-27; Pet. App. 33a.

3.a. The district court denied petitioners' motion to dismiss the complaint. The court "conclude[d] that Congress was cautious in crafting the definition of a church plan and therefore the definition means what it says—that a church plan must, from the outset, be established by a church and can be maintained by an organizations controlled by or associated with a church." Pet. App. 40a. The court explained that "although the church plan definition, as defined in subsection A, is expanded by subsection C to include plans *maintained* by a tax-exempt organization, it nevertheless requires that the plan be ***established*** by a church or a convention or association of churches." Pet. App. 39a. That interpretation "provides a common sense reading of the statute based on its plain text." Pet. App. 46a.

b. The district court certified the following question for interlocutory appeal under 28 U.S.C. §1292(b):

> Whether an organization, a civil law corporation or otherwise, can both establish and maintain a "church plan," as defined in the Employee Retirement Income Security Act, 29 U.S.C. §1002(33), if such organization is controlled by or associated with a church or a convention or association of churches?

Pet. App. 65a.

4.a. The court of appeals affirmed, without dissent. Pet. App. 1a-26a. The court concluded that "the statute has a plain meaning, and that meaning sets the result." Pet. App. 13a. The court explained that "[p]rior to 1980, a plan needed to be established *and* maintained by a church" to qualify as a church plan. Pet. App. 13a. "The 1980 amendments provided an alternative way of meeting the maintenance requirement by allowing plans maintained by church agencies to fall within the exemption[,] [b]ut they did not do away with the requirement that a church establish a plan in the first instance." Pet. App. 13a.

The court analogized the statute here to a hypothetical statute providing that "any person who is disabled and a veteran is entitled to free insurance." Pet. App. 14a. The court postulated a later amendment providing "that, for purposes of the provision, 'a person who is disabled and a veteran includes a person who served in the National Guard.'" Pet. App. 14a. As the court of appeals summarized, petitioners' own counsel conceded that, under such a statute, "a person who served in the National Guard but is not disabled" does not "qualif[y] to collect free insurance ... because only the second of the two conditions was satisfied." Pet. App. 14a; *see infra* pp. 23-24. That correct concession "only serves to highlight the fatal flaw in the construction of ERISA advanced by [petitioners]." Pet. App. 14a.

The court added that petitioners' construction also would make the "establishment requirement in

[§33(A)] ... superfluous[,]" "because any plan, regardless of who established it, would be eligible for an exemption as long as it is maintained by an entity that meets the requirements of [§33(C)(i)]." Pet. App. 14a. The court noted that "the purpose of [§33(C)(i)] was not to deal with a plan established and maintained by a church agency but rather to account for a plan established by a church and maintained by its pension board (*i.e.*, a church agency)." Pet. App. 15a n.7.

The court held that, although it "need not decide the issue," it had "substantial reservations over whether SPHS can even maintain an exempt plan." Pet. App. 17a n.8. The court explained that SPHS appears not to meet the subsection 33(C)(i) "principal purpose" requirement because the "principal purpose [of SPHS] is the provision of healthcare and not the administration or funding of the retirement plan." Pet. App. 17a-18a n.8.

The court went on to find that, "[e]ven if the statute were ambiguous and the legislative history bore on our analysis, the result would be the same." Pet. App. 18a. The court's extensive examination of the legislative history "reinforce[d]" the "conclusion that the exemption is only available to plans established by churches," because it "demonstrates that the purposes of the 1980 amendments were to account for plans established by churches but maintained by church agencies ... and to extend the sunset provision set to take effect at the end of 1982." Pet. App. 18a-19a. The court noted that SPHS "has not pointed to a single statement showing that Congress, in addition to being concerned about the sunset provision and plans maintained by pension boards (*i.e.*, church

agencies), was also focused on plans *established* by those agencies." Pet. App. 22a.

Finally, the court rejected petitioners' argument that non-precedential IRS letter rulings or hypothesized congressional acquiescence in those rulings (of which there was no reason to believe Congress knew) should alter its conclusion. Pet. App. 22a-24a. The court easily disposed of petitioners' argument that they were constitutionally *entitled* to a broadened church-plan exemption. The court noted that petitioners' argument "that Congress cannot validly distinguish between churches and church agencies" is "unpersuasive," because "[C]ongress regularly applies provisions to churches without reference to church agencies." Pet. App. 25a (citing statutes).

b. The court denied petitioner's petition for rehearing and rehearing en banc, with no recorded dissent. Pet. App. 27a-28a.

REASONS FOR DENYING THE PETITION

This case presents the same question as the petition in *Advocate Health Care Network v. Stapleton*, No. 16-74. As discussed in the Brief in Opposition in that case (pp. 9-16), the courts of appeals have uniformly agreed that a church plan must be established by a church. They have correctly held that large health-care organizations like SPHS must provide ERISA-mandated minimum protection and insurance for their employees' pension plans, just like SPHS's secular competitors are required to do. And in this case, SPHS terminated any new participation in the plan at issue in 2010, establishing a new (and ERISA-compliant) defined contribution plan for employees

hired later. The question presented here is accordingly of dwindling importance to petitioners. Further review, especially at this interlocutory stage of this case, is unwarranted.

I. THE ONLY THREE COURTS OF APPEALS TO ADDRESS THE ISSUE HAVE AGREED, WITHOUT DISSENT, THAT A CHURCH PLAN MUST BE ESTABLISHED BY A CHURCH

As discussed in the Brief in Opposition in *Advocate* (pp. 9-16), all three courts of appeals that have addressed the issue in this case have reached the same conclusion: subsection 33(A)'s requirement that an ERISA-exempt church plan be "established" by a church was not altered by subsection 33(C)(i)'s specification that a church plan can be "maintained" by a church-affiliated organization that satisfies certain requirements. All three courts rejected the same arguments petitioners make here without dissent. The earlier decisions of two courts cited by petitioner did not address the question presented here. The question presented here remains open in those circuits. There is no conflict.

A. The Third, Seventh, and Ninth Circuits Have All Rejected Petitioners' Arguments Without Difficulty

1. The Third Circuit in this case concluded that "the statute has a plain meaning, and that meaning sets the result." Pet. App. 13a. As the court explained, "[t]he 1980 amendments provided an alternate way of meeting the maintenance requirement by allowing plans maintained by church agencies to fall within the exemption[,] [b]ut they did not do away with the

requirement that a church establish a plan in the first instance." Pet. App. 13a. The court found that the legislative history further supported its conclusion. Pet. App. 18a-22a. The court also rejected the hospital's reliance on non-precedential IRS rulings, Pet. App. 22a-23a, and held that petitioners' Religion Clause arguments were without merit, Pet. App. 24a-26a.

2. As explained in the Brief in Opposition in *Advocate* (pp. 9-11), the only two other courts to have reached the question presented expressly agreed with the Third Circuit's ruling and reasoning here. The Seventh Circuit in *Advocate* agreed that "[t]he plain language of (33)(C) merely adds an alternative meaning to one of subsection (33)(A)'s two elements—[the] 'maintain' element—but does not change the fact that a plan must still be established by a church." 817 F.3d at 523. The Ninth Circuit in *Rollins v. Dignity Health*, 2016 WL 3997259 (9th Cir. 2016), *petition for cert. filed*, Aug. 29, 2016 (No. 16-258), also agreed with each of its sister circuits that, "to qualify for the church-plan exemption ... a plan must have been established by a church *and* maintained either by a church or by a principal-purpose organization." *Id.* at *3. Like the Third Circuit, the Seventh and Ninth Circuits concluded that the legislative history supported this construction, rejected the hospitals' reliance on non-precedential IRS rulings, and held that petitioners' Religion Clause arguments were without merit.

3. In short, three courts of appeals have examined precisely the arguments that petitioners make here and rejected them. There was no dissent in any of the three courts of appeals.

B. The Question Presented Here Was Not Before the Fourth and Eighth Circuits

As explained in the Brief in Opposition in *Advocate* (pp. 11-16), petitioners mistakenly contend that the decisions of the Fourth Circuit in *Lown v. Continental Casualty Co.*, 238 F.3d 543 (4th Cir. 2001), and the Eighth Circuit in *Chronister v. Baptist Health*, 442 F.3d 648 (8th Cir. 2006), conflict with the uniform view of the Third, Seventh, and Ninth Circuits. Neither *Lown* nor *Chronister* conflicts with, or is even in any tension with, the decisions of the latter courts. Petitioners cite *no* language in *Chronister* that addressed the issue of statutory construction here, and the brief sentence they quote from *Lown* was dictum. Neither the Fourth Circuit nor the Eighth Circuit was asked to decide whether a church plan could be established by a non-church organization. Neither court engaged in any statutory analysis regarding whether a church plan must be established by a church, as both courts concluded that the plans at issue were *not* church plans because they did not satisfy *other*, independent requirements of the church plan definition.

The Fourth and Eighth Circuits therefore are not presently bound to rule one way or the other on the question presented here. Those courts are likely to have the opportunity to address the question presented here in new cases currently pending in their district courts. *See* Pet. 13-15. There is no reason to believe that, when they do so, they will deviate from the plain meaning of the statutory text and the unanimous decisions of the Third, Seventh, and Ninth Circuits.

II. GRANTING REVIEW WOULD PUT AT RISK SPHS'S 2,800 EMPLOYEES AND IS UNWARRANTED AT THIS INTERLOCUTORY STAGE

As this litigation proceeds, SPHS's 2,800 employees must endure the costs and risks of SPHS's legally inadequate pension plan, while SPHS reaps the competitive advantages in the marketplace of its ability to impose a substandard plan on its employees. No circuit has agreed with petitioners, and there is nothing else that would indicate that petitioners' argument has sufficient merit to warrant this Court's attention at this interlocutory stage.

A. There Is No "Settled Law" that Supports Petitioners' Interpretation

Petitioners argue that further review is warranted because "[i]t has been settled law for well over thirty years that pension plans maintained by otherwise qualifying church-affiliated organizations are exempt from ERISA ... , whether or not a church itself established the plan." Pet. 1. As explained in the Brief in Opposition in *Advocate* (pp. 16-20) however, "[s]ettled law" is created by decisions of courts or, at most, agency rulings that are intended to state the agency's considered view on a subject. As shown above, the law in the courts of appeals is contrary to petitioners' position, and no agency has made any precedential or reliance-worthy rulings on the subject.

1. Petitioners rely on a memorandum issued for internal agency use by the IRS's general counsel in 1982. IRS Gen. Couns. Mem. 39,007, 1983 WL 197946 (Nov. 2, 1982). As explained in the Brief in Opposition in *Advocate* (pp. 17-19), that memorandum expressly

instructs that it "is not to be relied upon or otherwise cited as precedent by taxpayers." 1983 WL 197946, at *6. Moreover, the memorandum is not entitled to deference because it was not a result of "formal adjudication or notice-and-comment rulemaking," *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). As the courts of appeals have concluded, it also has no "power to persuade" because it "is based on an obvious misreading of the statutory text, and it ignores the relevant legislative history." *Dignity*, 2016 WL 3997259, at *7; *see* Pet. App. 23a; *Advocate*, 817 F.3d at 530-31. It therefore cannot be taken as "settled law," or, indeed, as "law" in any sense.

2. The same is true of later-issued private letter rulings, which also "may not be used or cited as precedent." 26 U.S.C. §6110(k)(3); *see Advocate*, Br. in Opp'n pp. 18-19 (discussing nonprecedential status and inability of private letter ruling to bind nonparties, such as a hospital's employees). SPHS itself did not even receive such a ruling until 2013, after this case was commenced. Pet. App. 7a. In any event, those letter rulings do not *analyze* the statute; they merely *restate* the statutory text before applying the conclusion of the general counsel memorandum. Recipients of private letter rulings may be entitled to rely on such letters *vis-à-vis* the IRS with respect to the tax-qualification status of their benefit plans.[2]

---

[2] *See* IRS Rev. Proc. 2016-1, §2.01, 2016 WL 20933 (Jan. 4, 2016) (a "letter ruling" is a response to a taxpayer's inquiry "about its status for tax purposes or the tax effects of its acts or transactions."); *id.* §11.01.

But petitioners cite no authority indicating that recipients of such letters—much less *other* entities—are entitled to rely on the informal, nonprecedential position of the IRS as a justification for denying plan participants the protections to which they are entitled under ERISA.

3. Petitioners' concerns regarding a lack of national uniformity ring hollow. *See* Pet. 24-25. The law *is* uniform—every circuit that has addressed this issue has reached the same result; plan sponsors have no contrary authority on which to rely if they choose to continue to treat non-church-established plans as church plans. Moreover, uniformity supports the decisions of the Third, Seventh, and Ninth Circuits; petitioners' exemption from ERISA would mean that plans like SPHS's are subject to the varying substantive and remedial laws of fifty different States. *See, e.g.*, *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 945 (2016); *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 148 (2001).

4. Petitioners contend that the "vast majority of benefit plans currently operated as church plans were not established by churches themselves." Pet. 17. Petitioners' carefully worded assertion merely reflects the fact that hundreds of church-associated hospital conglomerates, often at the urging of "gotcha" (Pet. 21) benefit consultants, have in recent decades exploited a misreading of ERISA to lower their costs by claiming church-plan status for plans that had been operated—correctly—as ERISA plans. *See infra* pp. 16-17. That traditional church-established plans have rarely sought IRS private letter rulings, Pet. 17-18, is not surprising, since there is no question that a plan

established by a church satisfies the statutory church-plan definition.[3]

B. Further Delay of this Litigation Would Impose Severe Costs on SPHS's Employees

1. Imposition of minimum standards on pension plans and ensuring that employees actually get the benefits promised by such plans are essential goals of ERISA. *See* 29 U.S.C. §1001(a). As explained in the Brief in Opposition in *Advocate* (p. 20-21), ERISA was enacted to redress a sadly extensive record of employees being left with little or nothing to show after years of reliance on an employer's promises of pension benefits. *See, e.g., Nachman Corp. v. PBGC*, 446 U.S. 359, 375 (1980). Non-ERISA plans pose the same risks today, as unfortunately demonstrated by the failures of purported "church plans" that were operated by a number of hospital systems. The failures of those underfunded and uninsured plans deprived employees of the pensions they had been promised and for which they had worked for many years. *See Advocate*, Br. in

---

[3] This case does not present the question whether certain plans covering clergy were actually "established" by pension boards, Pet. 17-18, or whether instead, consistent with subsection 33(A), such plans were established by conventions or associations of churches with the assistance of pension boards. In petitioners' cited example, the Second Circuit explained that "[i]t is not in dispute that Concord established its health and pension plans and that Concord is a church." *Coleman-Edwards v. Simpson*, 330 F. App'x 218, 220 (2d Cir. 2009).

Opp'n p. 21 & n.6 (citing further examples). The complaint alleges underfunding and other current deficiencies in SPHS's plan.[4] Without ERISA's protections and PBGC insurance, nothing would protect SPHS's employees from substandard substantive provisions, a lack of proper reporting and disclosure, and an ultimate risk of plan failure.

2. Petitioners argue that "[i]t is hard to overstate the burden and havoc" that the court of appeals' decision would create. Pet. 2. Because the extent of petitioners' ERISA violations and the scope of necessary relief have not yet been litigated or resolved, petitioners' contention at this interlocutory stage is pure speculation. As explained in the Brief in Opposition in *Advocate* (pp. 23-24), petitioners' assertions that they would be forced to make "irreversible" changes and would incur other costs of compliance (Pet. 19) are vastly overstated. Rather, ERISA compliance would require them to operate their plans—as do their secular competitors—in accordance with the requirements that Congress deemed necessary to ensure that employees are treated fairly and their promised pensions are secure.

It is particularly ironic for petitioners in this case to claim that complying with ERISA would be "irreversible," Pet. 19, as SPHS has previously made the precise switch—from ERISA to church plan status—

---

[4] While petitioners assert that the Plan is not underfunded, Pet. 12, that contention was vigorously disputed in the courts below. *See* Pet. App. 7a & n.3, 33a. Because this case arose on a motion to dismiss, petitioners' submission must be disregarded.

that they now claim could not occur in the event the decision of the court of appeals were ever overturned. SPHS established the Plan in this case in 1974. "For more than three decades, [SPHS] operated the plan subject to ERISA and represented to its employees in plan documents and other materials that it was complying with ERISA." Pet. App. 6a. In 2006, SPHS decided to switch to church-plan status, presumably to avoid the cost of complying with ERISA. Pet. App. 6a-7a, 32a. In 2011, it informed its employees that it was converting to church-plan status. Pet. App. 32a. As explained in the Brief in Opposition in *Advocate* (pp. 23 & n.7, 24), hundreds of other plans have been reimbursed by the PBGC for previously paid premiums when, after years of operating as ERISA plans, they similarly made the "irreversible" switch to claim church-plan status.

C. Petitioners' Exaggerated Claims of Injury from Allowing this Litigation to Continue Are Without Merit

Petitioners' other arguments are without foundation.

1. Petitioners state that SPHS "is a nonprofit entity" and that "[i]n 2014, it provided $36.2 million in charitable care to the needy[.]" Pet. 21 (citing C.A. App. A341). Petitioners argue that allowing this litigation to proceed (and protecting their employees under ERISA) "would come at the expense of destitute patients in New Jersey who rely on this free care." Pet. 21.

SPHS's $36.2 million in contributions to the community is a number from 2012, not 2014.[5] That fact is significant because it appears that in 2012, SPHS—which had not yet received a private letter ruling from the IRS, *see* Pet. App. 32a—was still paying PBGC premiums and presumably operating the plan as an ERISA plan.[6] In any event, regardless of the plan's status—church plan or ERISA plan—in 2012, the figure is on a par with the contributions of its secular competitors who definitely comply with ERISA. Because petitioners' figure derives from its consolidated financial statements and because community benefit numbers in the financial statements of SPHS's competitors may be calculated differently, it is useful to compare the similar numbers provided in the annual IRS Form 990 filed by tax-exempt institutions. In

---

[5] Petitioners cite (at Pet. 21) C.A. App. A341 ¶15, which is a certification of Garrick Stoldt, VP & CFO of SPHS, dated August 12, 2013. It states that "[i]n the last calendar year, [SPHS] reported $36.2 million expended for charity care and community benefits, or 9% of its total expenses[.]" The $36.2 million amount appears in SPHS's consolidated financial statements from 2012. C.A. App. A1293.

[6] *See* Pension Rights Center, *91 church plan PBGC premium refunds in the years 1992 to 1998 (and 2013)*, http://www.pensionrights.org/sites/default/files/docs/church_plan_refunds_1992-1998_2013.pdf (including St. Peter's University Hospital's pending refund amount for year 2013, #215 on the list on p. 3).

2012, Saint Peter's University Hospital[7] reported $36.7 million in net community benefit expense on its Form 990 Schedule H, or 9.14% of its total expenses.[8] Other secular health-care providers in New Jersey devoted similar proportions of their expenses to community benefits while also providing ERISA protections to their employees. For example, the Robert Wood Johnson University Hospital's $79.3 million in net community benefit expense was 10.53% of its total 2012 expenses.[9] Hackensack University Medical Center's $106.6 million in net community benefit expense was 9.44% of its total 2012 expenses.[10] Atlantic Health System's $118.5 million of net community benefit expense was 7.87% of its total 2012 expenses.[11] Moreover, in 2014—after SPHS received its private letter ruling and presumably ceased paying PBGC premiums—Saint Peter's University Hospital re-

---

[7] SPHS is a holding company that provides healthcare services through Saint Peter's University Hospital and other subsidiaries. *See, e.g.*, C.A. App. A1287.

[8] *See* http://bit.ly/2cfysEo (Saint Peter's University Hospital 2012 Form 990 at Schedule H lines 7k(e), (f)).

[9] *See* http://bit.ly/2c9y9HT (Robert Wood Johnson University Hospital 2012 Form 990 at Schedule H lines 7k(e), (f)).

[10] *See* http://bit.ly/2coi07u (Hackensack University Medical Center 2012 Form 990 at Schedule H lines 7k(e), (f)).

[11] *See* http://bit.ly/2cKgnh7 (Atlantic Health System, Inc. 2012 Form 990 at Schedule H lines 7k(e), (f)).

ported $30.1 million in net community benefit expense representing 7.51% of its total expenses, which is *less* than it spent on community benefits when it apparently was still complying with ERISA.[12]

In fact, federal and state laws require all nonprofit, and most for-profit, hospitals to provide community benefits in various forms. Under 42 U.S.C. §1395dd, all hospitals receiving Medicare funds must treat emergency patients regardless of their ability to pay. To remain tax-exempt, nonprofit hospitals have long been required to provide community benefits. *See* IRS Rev. Rul. 69-545, 1969 WL 19168 (Jan. 1, 1969). The Affordable Care Act imposes additional obligations. 26 U.S.C. §501(r). Laws in many states, including New Jersey, require hospitals to serve all patients regardless of ability to pay and generally limit hospital charges and billing and collection practices.[13] New Jersey hospitals also receive partial reimbursement for charity care services through a Health Care Subsidy Fund. N.J. Stat. Ann. §26:2H-18.58. SPHS must provide these community benefits, and will continue

---

[12] *See* http://bit.ly/2cxRQg9 (Saint Peter's University Hospital 2014 Form 990 at Schedule H lines 7k(e), (f)).

[13] *See* N.J. Stat. Ann. §26:2H-12.52 (limiting the amounts that nonprofit and for-profit hospitals may charge uninsured state residents with family gross income of less than 500 percent of the federal poverty level); *id.* §26:2H-18.64 (prohibiting hospitals from denying admission or appropriate services based on a patient's ability to pay); N.J. Admin. Code §10:52-11.14 (prohibiting hospitals from billing for services or initiating collection procedures against persons determined to be eligible for charity care).

to receive charity care subsidies, regardless of the ERISA status of its pension plans.

3. Petitioners' other hyperbolic claims should be rejected. Petitioners argue that SPHS faces "more than $550 million in penalties" for just one year. Pet. 21. But ERISA penalties are authorized "in the court's discretion." 29 U.S.C. §1132(c)(3). Petitioners offer no example of such a massive penalty award in an ERISA case, and they presumably believe that it would be a clear abuse of discretion to award such a penalty here. In any event, petitioners' concerns are premature in this interlocutory posture.

Petitioners contend that ERISA would require SPHS "to revamp investment strategies to eliminate any religious or socially responsible investment criteria that might conflict with ERISA's prudent-investor standard." Pet. 19-20.[14] But ERISA's duty to act "solely in the interest of participants," 29 U.S.C. §1104(a)(1), does not prohibit screening morally objec-

---

[14] Interestingly, SPHS does not advance the argument advanced by petitioners in *Advocate* that ERISA status "could force some church-affiliated employers to abandon defined benefit plans in favor of defined contribution plans that shift investment risks from the employer to individual employees." *Advocate*, Pet. for a Writ of Cert. p. 20. Perhaps that is because, even though SPHS claims non-ERISA, church plan status for the defined-benefit Plan in this case, it nonetheless closed the Plan to new employees and replaced it with a defined contribution plan. *See* Compl. ¶¶61-62, C.A. App. A62.

tionable investments if (as is usually the case) available alternative investments are likely to perform on par with those that are screened out. *See* 29 C.F.R. §2509.2015-01 (2015).[15] Nor does it impose any *additional* burden on SPHS. SPHS's own Plan document, like most such documents, already incorporates essentially the same duty when it requires the plan to be managed "for the exclusive benefit" of plan participants. *See* C.A. App. A464 (SPHS Retirement Plan Restatement § 12.02).

III. PETITIONERS' PLAN IS NOT A "CHURCH PLAN"

For all the reasons given by the Third, Seventh, and Ninth Circuits, the terms of the statute make clear that a plan that is not established by a church is not an ERISA-exempt "church plan." Those courts correctly rejected petitioners' arguments to the contrary.

A. The Text and Legislative History Both Make Clear that a Church Plan Must Be "Established" by a Church

1.a. Petitioners argue that respondents' reading renders superfluous the use of the term "established" before "includes" in subsection 33(C)(i). Pet. 25. As discussed in the Brief in Opposition in *Advocate* (pp. 29), however, that argument is based on an incomplete quotation of the statute. As the Third, Seventh,

---

[15] *See* 80 Fed. Reg. 65135-01 (Oct. 26, 2015) (new Department of Labor bulletin superseding prior bulletin that had "unduly discouraged fiduciaries from considering ... environmental, social, and governance factors").

and Ninth Circuits all held, nothing about the structure or context of the language indicates the basic requirement that a church plan be established by a church has fallen by the wayside.

b. Petitioners now disavow (Pet. 27) a concession they made that illustrates the meaning of the statute here. The Third Circuit hypothesized a statute offering free insurance to a "person who is disabled and a veteran" and an amendment providing that "a person who is disabled and a veteran includes a person who served in the National Guard." Pet. App. 14a. The court inquired whether under those provisions a *non*-disabled ex-National Guardsman would be entitled to free insurance. Pet. App. 14a. Petitioners' counsel correctly answered no.[16]

Although counsel now say they have realized that the hypothetical is "irredeemably slanted," Pet. 27, it is in fact directly parallel to the statute at issue here. Just as Congress in the hypothetical likely viewed disability as essential to qualify for free insurance, Congress here viewed the church's establishment of the plan as essential for the exemption. After all, the exemption here is for "church plans," *not* "religious plans." A church that establishes a plan at least

---

[16] Petitioners contend that their counsel "explained that the church plan language was 'different.'" Pet. 27 (citation omitted). What counsel actually said was that the hypothetical was "*slightly* different" and then added that "I think the person has to be disabled, I think, obviously in that instance." Oral Argument at 12:46-58, Oct. 8, 2015, http://www2.ca3.uscourts.gov/oralargument/audio/15-1172KaplanvSaintPeter's.mp3 (emphasis added).

makes a promise to employees regarding their benefits, which creates a legal (and certainly a moral) obligation to keep that promise. To ensure that the exemption applies only to a church's plan, Congress provided that the church must "establish" the plan for its employees, even if another entity "maintains" it. No church or association of churches stands behind SPHS's Plan.

2. As explained in the *Advocate* Brief in Opposition (pp. 30-33), each of the courts of appeals have found that the legislative history is entirely clear that subsection 33(C)(i) was intended to correct only the "technical problem[]" that arose because "[t]he large majority of church plans of the congregational denominations are administered by a pension board, a unit separate from, but controlled by, the denomination." 124 Cong. Rec. 12,107 (1978) (statement of Rep. Conable). It does not reflect any intent to enact a broad new exemption for entities like SPHS operating in the commercial marketplace. The Third Circuit here engaged in a thorough canvass of the legislative history. *See* Pet. App. 18a-22a. It correctly concluded that, "despite a lengthy discussion of legislative history, [petitioners] ha[ve] not pointed to a single statement showing that Congress, in addition to being concerned about the sunset provision and plans maintained by pension boards (*i.e.*, church agencies), was also focused on plans *established* by those agencies." Pet. App. 22a.

B. The Only Constitutional Problem in this Case Would Arise if Petitioners' View of the Statute Prevailed

1. The court of appeals' decision does not create

any "constitutional doubts." Pet. 30. Far from providing an argument in favor of certiorari, the constitutional doubt doctrine counsels against further review in this case. As explained in the Brief in Opposition in *Advocate* (pp. 33-34), no court has suggested that petitioners' constitutional argument has merit, much less that it requires disregarding the clear meaning of the statute Congress enacted.

Petitioners argue that the court of appeals' decision will lead to a "morass," because it will be difficult to sort out whether entities establishing benefit plans qualified as "churches." Pet. 31. Petitioners cite as an example the Ninth Circuit's *Dignity* case, but in that case the district court had no trouble concluding that there was no genuine dispute of material fact that the healthcare system at issue established the plan and that the healthcare system was not a church. *Rollins v. Dignity Health*, 59 F. Supp. 3d 965, 974 (N.D. Cal. 2014).[17] On appeal, the Ninth Circuit considered and rejected petitioners' argument that distinguishing between churches and other religious organizations would result in government entanglement in religion, explaining that an inquiry into religious doctrine is "not require[d] ... and is not the inquiry that courts or agencies actually employ" in assessing whether an entity qualifies as a church. *Dignity*, 2016 WL 3997259, at *9 (citing *Found. of Human Understanding v.*

---

[17] The Ninth Circuit, on interlocutory appeal, declined to review the district court's rejection of defendants' argument that the plan was "co-established" by religious orders of sisters. *Dignity*, 2016 WL 3997259, at *10. Petitioners' claims about Dignity can be left to be addressed in the papers in that case.

United States, 614 F.3d 1383 (Fed. Cir. 2010); *Am. Guidance Found., Inc. v. United States*, 490 F. Supp. 304 (D.D.C. 1980)). In any event, surely no "morass" is in sight here; SPHS "is not a church," Pet. App. 8a, 18a; *see* Pet. App. 43a, and it is undisputed that SPHS established the Plan at issue in this case.

2. The constitutional doubt doctrine would come into play in this case only if the Court accepted *petitioners'* view of the statute. This Court has recognized that "the government may (and sometimes must) accommodate religious practices." *Corp. of Presiding Bishop of Church of Jesus Christ of the Latter-day Saints v. Amos*, 483 U.S. 327, 334 (1987) (citation omitted). But it has also recognized that Congress may not act with no purpose other than simply "favoring ... religious adherents collectively over nonadherents," *Board of Education v. Grumet*, 512 U.S. 687, 696 (1994), especially if doing so would burden nonadherents, *Estate of Thornton v. Caldor*, 472 U.S. 703, 708-09 (1985).

As explained in the Brief in Opposition in *Advocate* (pp. 34-35), such a forbidden raw preference for religiously affiliated institutions is exactly what petitioners argue for here. The core purpose of the church-plan exemption was to avoid "examination of books and records" that "might be regarded as an unjustified invasion of the confidential relationship ... with regard to churches and their religious activities." S. Rep. No. 93-383 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4889, 4965. That purpose, however, could not justify an exemption for SPHS and similar institutions, since SPHS already participates in Medicare and Medicaid and issues tax exempt bonds, all

of which require it to disclose its financial records and relationships in great detail. *See* Compl. ¶55, C.A. App. A60. Moreover, granting ERISA exemptions to SPHS has an additional defect, because it imposes substantial costs on nonadherents, such as SPHS's employees and competitors. *See Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) ("[C]ourts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries."); *United States v. Lee*, 455 U.S. 252, 261 (1982). Far from creating constitutional doubt, the court of appeals' decision removes it.

3. The constitutional doubt doctrine provides an additional reason why this Court should deny certiorari. There is no basis for petitioners' constitutional-doubt argument. Nonetheless, granting certiorari in this case could easily require the Court to address the constitutional arguments advanced by one side or the other. In a case like this one that is in an interlocutory posture and in which there is no conflict in the circuits, prudence dictates that the Court should avoid a grant of review that could easily require an unnecessary constitutional determination.

IV. THIS CASE IS IN ANY EVENT A POOR VEHICLE

This case is in any event a poor vehicle, for two reasons. First, the SPHS Plan has been closed to new participants for six years, and its future status under ERISA is therefore a matter of dwindling importance to petitioners. Second, the SPHS Plan would not qualify as a church plan even if this Court were to grant review and accept petitioners' arguments on the question presented.

1. In 2010, SPHS closed the Plan to new employees and in 2012 announced that henceforth new employees would participate in a new, defined contribution plan. Compl. ¶¶61-62, C.A. App. A62. Indeed, with respect to that plan, SPHS apparently discovered that the national uniformity provided by ERISA was beneficial, because it operates that plan subject to ERISA. Compl. ¶62, C.A. App. A62.

The question here accordingly has dwindling importance to petitioners. The number and identities of the participants in the Plan is fixed. That number has no doubt declined in the years since 2010, and it will continue to do so in the future. For that reason, further review in this case is not warranted.

2. In addition, further review is not warranted here because, even aside from the "established by a church" requirement, there are two alternative and independent statutory requirements that SPHS could not satisfy. Failure to satisfy either would be sufficient to make the Plan ineligible for church-plan status.

a Subsection 33(C)(i) authorizes treatment as a church plan only for plans that are "maintained by an organization ... the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits." 29 U.S.C. §1002(33)(C)(i). The Third Circuit had "substantial reservations over whether [SPHS] can even maintain an exempt plan." Pet. App. 17a n.8. Those reservations are well founded. The "principal purpose" requirement is aimed directly at pension boards of the sort discussed in the legislative record when

subsection 33(C)(i) was enacted, and it demonstrates Congress's intent to permit such pension boards to "maintain" church-established plans. However, the "principal purpose or function" of SPHS, which "maintain[s]" the Plan, is to provide health care and related services, not to administer or fund a plan for retirement benefits. Accordingly, the SPHS Plan would not qualify as a church plan, even if the "established by a church" requirement were disregarded. *See* Pet. App. 17a n.8; Br. Appellees pp. 53-55, *Kaplan v. Saint Peter's Healthcare Sys.* (3d Cir. May 4, 2015) (No. 15-1172).

b. The Plan does not satisfy the requirement in subsection 33(A) that a church plan be maintained "for" the "employees" of a church. *Id.* §1002(33)(A). Subsections 33(C)(ii)(II) and (iii) define employees of a church to include employees of organizations "controlled by or associated with" a church. SPHS is not a church and is neither controlled by nor associated with a church.

SPHS is not "controlled by" a church. Petitioners assert that SPHS is "owned and controlled by the Roman Catholic Diocese of Metuchen" and "[t]he Bishop of Metuchen is the sole member of Saint Peter's and appoints the President, CEO, CFO, and Secretary." Pet. 9. That assertion is contradicted by SPHS's sworn statements to the IRS, in which SPHS has consistently represented that it has no members, and specifically has no members capable of appointing a controlling majority of its governing board. C.A. App. A1033, A1095, A1149. Additionally, SPHS's Forms 990 consistently admit that "[c]ontrol of [its hospital] rests with its Board of Trustees[,] which is comprised

of independent civic leaders and other prominent members of the community[.]" C.A. App. A1056, A1113.

As for "associated with," petitioners' own cases, *Lown* and *Chronister*, establish that SPHS cannot meet that standard. SPHS does not receive funding from any church. Compl. ¶49, C.A. App. A60; *see also* C.A. App. A1613 ¶8, A1544-54; *see Lown*, 238 F.3d at 548 (hospital "'received no monies'" from church and imposed "no denominational requirement"). SPHS imposes no religious test on its employees, patients, or clients. Compl. ¶¶50, 53, C.A. App. A60; *see Lown*, 238 F.3d at 548 ("[N]o denominational requirement existed for anybody affiliated with Baptist Healthcare."). Petitioners argue that "Mass is said daily, ... daily morning prayers are broadcast over the public address system," and SPHS "provides healthcare services in accord with" guidelines promulgated by the U.S. Conference of Catholic Bishops. Pet. 9. But the Eighth Circuit in *Chronister* held that a hospital was not "associated with" a church, notwithstanding the fact that its "management [was] instructed to follow religious principles" and that "under Baptist doctrine, operating a facility for health care is part of the healing ministry of the church." 442 F.3d at 652-53.

3. For those reasons, SPHS's Plan would not be a church plan under ERISA, even if this Court held that a church plan need not be established by a church. Further review by this Court is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

KAREN L. HANDORF
Counsel of Record
MICHELLE C. YAU
COHEN MILSTEIN
SELLERS & TOLL PLLC
1100 New York Ave. NW,
Suite 500 East
Washington, DC 20005
(202) 408-4600
khandorf@cohenmilstein.com

JAMES A. FELDMAN
5335 Wisconsin Ave. NW,
Suite 440
Washington, DC 20015

LYNN LINCOLN SARKO
MATTHEW GEREND
KELLER ROHRBACK L.L.P.
1201 Third Ave.,
Suite 3200
Seattle, WA 98101
(206) 623-1900

RON KILGARD
KELLER ROHRBACK L.L.P.
3101 North Central Ave.,
Suite 1400
Phoenix, AZ 85012
(602) 248-0088

SEPTEMBER 16, 2016

ANU
BRIEFS

No. 16-86

In The

Supreme Court of the United States

SAINT PETER'S HEALTHCARE SYSTEM, ET AL.,

Petitioners,

v.

LAURENCE KAPLAN,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONERS

JEFFREY J. GREENBAUM
JAMES M. HIRSCHHORN
KATHERINE M. LIEB
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, NJ 07102
(973) 643-7000

LISA S. BLATT
Counsel of Record
ELISABETH S. THEODORE
ARNOLD & PORTER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
lisa.blatt@aporter.com

Counsel for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

Library of Congress

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REPLY 1

I. The Court Should Decide the Church-Establishment Question Now 1

II. Absent Review, ERISA Will Apply Differently In Different Circuits 8

III. There Is No Church-Establishment Requirement 10

CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

Cases

Flynn v. Ascension Health Long Term Disability Plan, 73 F. Supp. 3d 1080 (E.D. Mo. 2014) 9

Harris Trust & Sav. Bank v. Salomon Smith Barney Inc., 530 U.S. 238 (2000) 6

Lown v. Continental Cas. Co., 238 F.3d 543 (4th Cir. 2001) 8

Morton v. Ruiz, 415 U.S. 199 (1974) 3

Stapleton v. Advocate Health Care Network, 817 F.3d 519 (7th Cir. 2016) 8

Statutes

29 U.S.C. § 1002(33)(C)(i) 7

29 U.S.C. § 1002(33)(C)(ii) 7

29 U.S.C. § 1002(33)(C)(iv) 7

Other Authorities

IRS Gen. Couns. Mem. 39,007, 1983 WL 197946 (July 1, 1983) 6

REPLY

Respondent disputes none of the following: The question presented is an important question of federal law. ERISA—a comprehensive federal regulatory scheme premised on national uniformity—currently applies differently to religious organizations in different circuits. The question presented affects millions of employees and hundreds if not thousands of religious nonprofits across the nation. The issue is recurring; indeed, an avalanche of class actions seek untold billions of dollars. The three relevant federal agencies for decades have rejected a church-establishment requirement, and countless religious organizations have relied on the agencies' interpretations. And three federal appellate courts have recently rejected the agencies' conclusions, upset what was a longstanding status quo, and created immense confusion.

This Court, not the lower courts, should have the final say on this important issue. And only this Court can resolve the disuniformity now causing massive upheaval in the administration of pension plans by religious employers. Time is of the essence, and further percolation will not assist this Court's resolution of the church-establishment question. The Court should grant certiorari.

I. The Court Should Decide the Church-Establishment Question Now

Respondent declares that "[t]his petition represents petitioner's attempt—in the face of consistent rulings (without dissent) by the only three courts of appeals to address the issue—to exempt the SPHS pension plan from ERISA." Opp. 1. That statement is untethered from reality. Saint Peter's did not

bring this case, much less "attempt" to exempt its plan from ERISA "in the face" of contrary appellate authority. Saint Peter's began operating as an ERISA-exempt church plan in 2006, and received an IRS ruling retroactively confirming its church plan status in 2013, before the recent appellate decisions. The only "attempt" here is respondent's attempt to disturb three decades of settled law and unchallenged administrative practice.

1. Respondent agrees that, since 1983, the IRS, DOL, and PBGC have issued hundreds of opinions, letter rulings, and settlement agreements assuring church-affiliated employers that their pension plans are exempt from ERISA, regardless of whether a church established the plans. Pet. 6-8. Respondent suggests that these opinions are basically worthless—due no deference and unworthy of petitioners' reasonable reliance. Opp. 13-14. Not only does this reasoning contradict those agencies' own assurances (Pet. 17), it flies in the face of common sense. ERISA is a notoriously complicated, nationwide regulatory scheme. Organizations must be able to rely on the unanimous and longstanding opinions of the three federal agencies charged with interpreting that statute. Saint Peter's and countless other religious organizations undisputedly *have* relied on the opinions of these agencies for decades. Pet. 16-18.[1]

The Third, Seventh, and Ninth Circuit decisions upset over thirty years of administrative practice. Respondent contends the courts were correct in refusing to defer to the decisions of the IRS, DOL, and

---

[1] Respondent suggests that PLRs apply only "with respect to ... tax-qualification status." Opp. 13. But Saint Peter's can't operate a church plan for tax purposes but not ERISA purposes.

PBGC. As an initial matter, the courts' criticisms of the agency statements are unfounded. Pet. 33; *see also Dignity Health* Pet. 33-34 (No. 16-258). The IRS's 1983 memorandum merits special deference since the IRS contemporaneously understood that Congress was reversing the IRS's 1977 interpretation. Pet. 5-7.

But regardless whether these agency rulings deserve deference—a merits question—they demonstrate the need for this Court's review. The 1983 memorandum has been followed by the IRS, PBGC, and DOL. Opp. 13. The IRS and DOL have issued over 550 rulings applying the memorandum. Contrary to respondent's suggestion (Opp. 15 n.3), it is not only judicial invalidations of notice-and-comment regulations that invade reliance interests and warrant review. *E.g.*, *Morton v. Ruiz*, 415 U.S. 199 (1974) (BIA manual).

2. The five amici highlight the immediate and irreparable burdens at stake. Absent this Court's intervention, the court of appeals decisions will have a devastating financial effect on religious employers and plan participants. Petitioners and other religious nonprofits within the Third, Seventh, and Ninth Circuits would have to restructure their plans to comply with ERISA's manifold duties and requirements. Respondent says these are the requirements "Congress deemed necessary" (Opp. 16), but that is the ultimate question in this case. And while religious nonprofits including Saint Peter's have *ceased* complying with ERISA (Opp. 16-17), the burdens involved in *complying* with ERISA are much different.

These burdens are the tip of the iceberg. Respondent alleges that Saint Peter's owes him hun-

dreds of millions of dollars in penalties—for just one year. Pet. 20-21. Respondent now says such relief could be an "abuse of discretion" (Opp. 21), but tellingly does not offer to withdraw his demands. Regardless, religious employers could find themselves in violation of federal securities laws, giving rise to potential civil penalties and even criminal liability. Brief of Church Alliance as *Amicus Curiae* in Support of Petitioners 5-8.

The loss of church-plan status could also strip plans of their qualified tax status under § 401 of the Code, with disastrous consequences for *employees*. *Id.* at 10-11. For example, participants would be taxed on benefits when they are vested, rather than distributed; amounts in trust to fund retirement benefits would be reduced by income taxes on the trust's earnings; and participants would be unable to defer federal income taxes by rolling distributions over into an IRA or another qualified plan. *Id.* The question presented is thus hardly of "dwindling importance" to Saint Peter's, which still operates the plan at issue. Opp. 9.

It makes no sense to force religious organizations, courts, and federal agencies to muddle through these questions now when the threshold question presented may render the entire enterprise unnecessary. More church plans are being sued, even since this petition was filed,[2] and respondent's counsel are advertising for new plaintiffs against new hospitals. If respondent's counsel have the time, energy, and resources to file dozens of class actions in nearly eve-

---

[2] Complaint, *Mollet v. Hosp. Sisters Health Sys.*, No. 16-cv-9238 (N.D. Ill. Sept. 26, 2016); Complaint, *Holcomb v. Hosp. Sisters Health Sys.*, No. 16-cv-3282 (C.D. Ill. Oct. 11, 2016).

ry circuit, and the matter is important enough to drain the resources of trial and appellate courts and religious nonprofits across the nation with litigation that could last decades, surely the sound administration of justice counsels for this Court's resolving the issue in one fell swoop now.

3. Respondent claims that granting the petition will harm petitioners' employees. Opp. 15-17. But respondent presents no evidence or *plausible* allegation that Saint Peter's Plan is underfunded (which it is not). Nor does respondent allege that Saint Peter's has failed to pay any benefit to any employee, before or after the plan began operating as a church plan. A few more months of the status quo pending this Court's decision is far less risky than fundamentally altering the pensions and benefits plans of thousands of employees.

Respondent asserts that the interlocutory posture makes the case unworthy of review. Opp. 12. He contends the Court should permit his other claims—including for hundreds of millions in penalties—to be adjudicated *before* the Court decides the church-establishment question. But ERISA coverage is a threshold question, no facts or further percolation would illuminate the question, and it is ripe for decision. That is why this case was certified for and resolved via interlocutory appeal. It makes no sense to litigate the pending claims below to then return to this Court to finally resolve a by-then-long-overdue issue. That is not in the interest of employers or employees.

And Saint Peter's mentioned the millions in community benefits it provides (Pet. 21) not for comparison with secular nonprofit hospitals (Opp. 18), but because forcing any nonprofit hospital to engage

in massively expensive and potentially unnecessary litigation harms patients by constricting the hospital's ability to heal the sick and poor. That is why the Court should grant certiorari.[3]

4. Respondent does not dispute that this case squarely presents the church-establishment question. He rather contends that review of the question presented might not alter the result. Opp. 27. But the presence of alternative grounds potentially supporting the judgment that have not been passed upon by the courts below hardly counsels for denial of certiorari; this Court regularly grants cases in such circumstances, including ERISA cases. *E.g.*, *Harris Trust & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 242 & n.1 (2000). And the Court should grant certiorari because of the importance of a national resolution of the church-establishment question.

Respondent's alternative arguments are also meritless. Respondent contends that subparagraph (C)'s "principal purpose" requirement bars church-related organizations from using internal subcommittees (rather than external church-affiliated corporations) to administer their church plans. Opp. 28-29. The federal agencies unanimously disagree. *E.g.*, IRS GCM 39,007, 1983 WL 197946, at *4 (July 1, 1983). Under the text, a church plan may be maintained by a church-affiliated "organization,

---

[3] Saint Peter's contributed $36.2 million in community benefits in 2012, and $39.7 million in 2014 (the petition transposed 2014 for 2012). Saint Peter's Healthcare System, 2014 Consolidated Financial Statements at 13. During both years Saint Peter's operated as a church plan, contrary to respondent's suggestion (Opp. 18, 20).

whether a civil law corporation or otherwise, the principal purpose of which is the administration or funding of a [pension plan] for the employees of a church." 29 U.S.C. § 1002(33)(C)(i) (emphasis added). The emphasized words, which respondent omits when he sets forth the statute (Opp. 28), establish that an internal, church-affiliated subcommittee with the requisite principal purpose can qualify.

Respondent also contends that the Plan is not maintained "'for' the 'employees' of a church," Opp. 29, a phrase that includes employees of an organization "controlled by or associated with a church," § 1002(33)(C)(ii). Respondent contends that Saint Peter's is not "controlled by" or "associated" with the Catholic Church. Opp. 29-30. This argument is frivolous. Among other things, the Bishop of the Roman Catholic Diocese of Metuchen is the *sole member* of Saint Peter's, and controls the Saint Peter's Board. That satisfies any definition of control. Pet. 9.[4]

As for association, the statute requires only that an organization "share[] common religious bonds and convictions" with a church. § 1002(33)(C)(iv). Saint Peter's easily qualifies, Pet. 9; the IRS deems a listing in the Official Catholic Directory sufficient evidence of association. And while respondent cites factors discussed in *Lown* and *Chronister* (Opp. 30), those cases involved hospitals that *disclaimed* any association with a church.

---

[4] Respondent's statement that Saint Peter's "represented that it has no members" (Opp. 29) is based on a few inadvertently-checked boxes on an IRS form that Saint Peter's subsequently corrected. COA App. 675-79.

II. Absent Review, ERISA Will Apply Differently In Different Circuits

Before respondent's counsel orchestrated these suits in 2013, *every* court to consider the issue had held or assumed that church plans need not be established by churches. Pet. 17. In this new wave of litigation, however, as the district court concluded, the lower federal courts are "split" and cases "conflict with each other." Pet. App. 59a. The Seventh Circuit acknowledged that the question "is springing up across the country" and has "divided" the district courts. *Stapleton v. Advocate Health Care Network*, 817 F.3d 519, 520 (7th Cir. 2016). These conflicting decisions severely undermine ERISA's goal of national uniformity and leave religious nonprofits and their plan participants in an untenable position of uncertainty. While respondent disputes the existence of a circuit split, he does not dispute that ERISA as a practical matter now applies differently in different circuits.

1. The Fourth Circuit declared that "a plan established by a corporation associated with a church can still qualify as a church plan." *Lown v. Continental Cas. Co.*, 238 F.3d 543, 547 (4th Cir. 2001). That sentence appeared in the portion of the Fourth Circuit's opinion in which the court outlined the exemptions' requirements. The Fourth Circuit then determined whether the plan at issue satisfied the requirements, and concluded that it did not. *Id.* at 548. That analysis would have been completely unnecessary if there were a church-establishment requirement. *Id.* at 546. And the Fourth Circuit plainly analyzed the statute—it followed its rejection of a church-establishment requirement by quoting the text of subparagraph (C). That was explanation

enough, because the IRS, DOL, PBGC, and Fourth Circuit reading of the statute is not complicated: Subparagraph (C) defines a church plan to "include" plans maintained by church-controlled or church-associated organizations. The Eighth Circuit followed the Fourth Circuit in *Chronister*. Pet. 22.

But even if the holdings were dicta (Opp. 11), they are de facto controlling. District courts follow these decisions. Pet. 23-24; *see also Flynn v. Ascension Health Long Term Disability Plan*, 73 F. Supp. 3d 1080, 1083 (E.D. Mo. 2014).

2. And even absent a crisp circuit conflict in the sense of conflicting decisions, there is manifestly a crisp conflict in practice. In the circuits that have not yet addressed the question, religious organizations, relying on long-settled agency rulings, currently operate exempt church plans, regardless of who established the plans. Since this petition was filed, respondent's counsel have entered into settlements that allow hospitals to operate *exempt* from ERISA unless this Court grants review and imposes a church-establishment requirement. Class Action Settlement Agreement § 4.1.4, *Lann v. Trinity Health*, No. 14-cv-02237 (D. Md. Aug. 1, 2016). The Court often waits for a circuit split so as to be sure a conflict is producing differential application of the law. There are no doubts on that score here. As for respondent's contention that "plan sponsors have no contrary authority on which to rely," Opp. 14, there remains a memorandum from the general counsel of the IRS and over 550 express agency rulings, not to mention *Lown*, *Chronister*, countless district court decisions, and respondents' counsel's settlements.

3. The need for uniformity is especially compelling under ERISA. Pet. 15, 24-25. Respondent ar-

gues that a church-establishment requirement will create greater uniformity if ERISA, rather than state law, applies more broadly. Opp. 14. But applying state law where ERISA on its face does not apply hardly undermines ERISA's overarching goal of nationwide uniformity. The problem here is that identical plans are treated differently *under ERISA*—some covered, some not, depending on the location of the plan.

III. There Is No Church-Establishment Requirement

Respondent's merits arguments are contrary to the text and the legislative history. Saint Peter's believes that the statute clearly forecloses a church-establishment requirement, but at a minimum respondent's gymnastics make clear that there is a substantial question this Court should decide. The Seventh Circuit agreed when it stayed its mandate in *Advocate*.[5]

1. Respondent does not coherently address his interpretation's surplusage problem. Pet. 25-26. Respondent cites the *Advocate* opposition, which states that "established" is not superfluous in subparagraph C because subparagraph C "repeats the basic definition of a church plan from sub[paragraph] 33(A)." *Advocate* Opp. 29 (No. 16-74). That is our point. Because subparagraph C repeats "established," subparagraph C alters the entire "basic definition" of subparagraph A, not just the maintenance requirement. And Congress did not eliminate "established" "altogether" (*Advocate* Opp. 29), *i.e.* from

[5] Petitioners did not ask the Third Circuit to stay the mandate here; a stay motion is before the district court.

subparagraph A, because there was no need—plans maintained by churches are established by churches.

Petitioners' counsel made no "concession" (Opp. 23) about the *church plan* exemption. Counsel's brief discussion of a hypothetical veterans' disability statute raised at oral argument is irrelevant here. And respondent's reliance on the hypothetical confirms its slant. Respondent contends that "[j]ust as Congress in the hypothetical likely viewed disability as essential to qualify for free insurance, Congress here viewed the church's establishment of the plan as essential." Opp. 23. If it is assumed that the hypothetical Congress viewed disability as essential, that would support the Third Circuit's interpretation of the hypothetical statute. But whether Congress viewed church-establishment as essential is the question presented here.

2. Respondent cites not a single sentence from the legislative history indicating that Congress wanted to retain a church-establishment requirement. Opp. 24. The snippets cited simply state that plans that were established by churches still qualified. Respondent's discussion of Congress's goals in amending the exemption (Opp. 3, 24) is incomplete and misleading. Pet. 28-32. Respondent does not dispute that the bill's co-sponsor expressed concern that the original definition prevented pension boards—which are not churches—from establishing church plans. Pet. 28.

3. Respondent's policy arguments are irrelevant to the statutory-interpretation question and meritless. Rejecting a church-establishment requirement would not "advantage[]" religious hospitals over their secular competitors. Opp. 8, 12, 16, 18-19. Saint Peter's competitors do not generally offer defined-

benefit plans, because they are too costly. Pet. 10. Respondent describes Saint Peter's, which operates a single hospital, as "large" (Opp. i, 8), but the decision below equally applies to a two-room clinic run exclusively by Catholic sisters.

Respondent fails to explain how or why a church-establishment requirement could protect plan participants against failures. Opp. 23-24. A church that "establishes a plan" has no "legal" obligation to fund the plan (*cf.* Opp. 24). And a church has no greater "moral" obligation (*id.*) than its affiliated religious organizations. Further, church agencies may often be wealthier than affiliated churches—especially than the congregational churches the amendment was designed to accommodate, like local synagogues. Pet. 30.

4. No court has accepted respondent's contention (Opp. 24-25) that the agency interpretation creates a First Amendment problem. The only constitutional problem springs from respondent's interpretation, which produces denominational discrimination and excessive governmental entanglement. Pet. 30-32. And contrary to respondent's suggestion (Opp. 27), if *both* sides contend that the other's position raises constitutional doubt, the constitutional issue is unavoidable and only highlights the need for this Court's attention.

*****

Respondent does not ask this Court to solicit the Solicitor General's views, and there is no need. The petition raises a clean, squarely presented question of statutory interpretation. And the delay associated with a CVSG would leave religious hospitals and other religious employers in limbo, not to mention

aggravate the enormous settlement pressures associated with class actions seeking billions of dollars.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

JEFFREY J. GREENBAUM
JAMES M. HIRSCHHORN
KATHERINE M. LIEB
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, NJ 07102
(973) 643-7000

LISA S. BLATT
Counsel of Record
ELISABETH S. THEODORE
ARNOLD & PORTER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
lisa.blatt@aporter.com

Counsel for Petitioners

October 20, 2016